

EXHIBIT I

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 -----x
5 TRIARCH ARCHITECTURAL SERVICES, P.C.,
6 Plaintiff,

3 -against- 11-CV-2708 (AKH)

10 MEDALLION INC., VLADIMIR VORONCHENKO
11 and GARTH HAYDEN ARCHITECT,
12 Defendants

14 May 10, 2012
15 9:14 a.m.

1
2 APPEARANCES:

3
4 MANDEL BHANDARI LLP
5 Attorneys for Plaintiff
6 11 Broadway, Suite 615
7 New York, New York 10004
8 BY: EVAN MANDEL, ESQ.

9
10
11 SAM P. ISRAEL, P.C.
12 Attorney for Defendants Medallion, Inc., and
13 Vladimir Voronchenko
14 1 Liberty Plaza, 23rd Floor
15 New York, New York 10006
16 BY: SAM P. ISRAEL, ESQ.

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1
2 MICHAELA DEISS, having been duly
3 sworn by the Notary Public, was examined and
4 testified as follows:

5 EXAMINATION BY

6 MR. MCKEE:

7 Q. Ms. Deiss, my name is Wesley McKee.
8 I'm with the firm of Gogick Byrne & O'Neill. We
9 represent one of the defendants in this litigation
10 brought by Triarch Architectural Services in the
11 Southern District, before the United States
12 District Court. I represent Garth Hayden
13 Architect. Have you ever had your deposition
14 taken before?

15 A. No.

16 Q. So this is your first time doing this
17 no?

18 A. Um-hum.

19 Q. I'm going to give you some
20 instructions. Do you understand that a deposition
21 is where I ask you a series of questions, and you
22 provide answers to those questions?

23 A. Yes, I do.

24 Q. And do you understand you've been
25 placed under oath?

1
2 APPEARANCES (Cont'd):

3
4 GOGICK BYRNE & O'NEILL LLP
5 Attorneys for Defendant Garth Hayden
6 Architect
7 11 Broadway, Suite 1560
8 New York, New York 10004
9 BY: ALBERT WESLEY MCKEE, III, ESQ.

10
11
12 ALSO PRESENT:

13 ELEONORA ZLOTNIKOVA

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1 Deiss

2 A. Yes.

3 Q. You understand that there's a
4 stenographer here, Mr. David Levy, who is taking
5 down my questions and your answers?

6 A. Yes.

7 Q. Mr. Levy will give us a booklet when
8 we're done, which will have all of my questions
9 and all of your answers, and that booklet will
10 preserve your testimony here as if it were in
11 court; do you understand that?

12 A. Um-hum, I do.

13 Q. So everything you say here is just the
14 same as if you were sitting in front of a jury and
15 a judge, do you understand that?

16 A. I do.

17 Q. Great. If at any point you don't
18 understand my question, please let me know you
19 don't understand it, and I'll rephrase it for you,
20 okay?

21 A. Yes.

22 Q. I'm asking you for what you know, not
23 for you to guess, okay?

24 A. Yeah.

25 Q. If you don't know, you can say you

1 Deiss
2 don't know, all right?
3 A. All right.
4 Q. If, however, because there's been some
5 passage of time since the underlying events have
6 occurred, you have a general recollection, space,
7 distance, time, value, anything like that, and
8 you're giving me an estimation based upon your
9 best recollection, you can do that. Just let us
10 know that's what it is, okay?

11 A. Yes.
12 Q. If your attorney, in particular, but
13 also if counsel for the other defendants seated to
14 my left raises any objection to my questions,
15 please allow the attorneys to discuss the
16 objection before we proceed, okay?

17 A. Sure.
18 Q. Finally, if at any point you feel you
19 need a break, just let me know and we will take a
20 break. The only caveat to that is that if I've
21 asked you a question, you have to give me the
22 answer before we take the break.

23 A. Okay.
24 Q. Okay? Oh, and most important, and
25 this is for Mr. Levy's benefit particularly, you

6
1 Deiss
2 A. Yes, I am.
3 Q. Who are the other directors of
4 Triarch?
5 A. There's a president and that is
6 Stephen Corelli.
7 Q. C-o-r-e-l-l-i?
8 A. C-o-r-e-l-l-i.
9 Q. And his official title is president?
10 A. Yes.
11 Q. Are there any other directors?
12 A. No.
13 Q. So it's just you and Mr. Corelli?
14 A. Yes.
15 Q. Do you have a title other than
16 director?
17 A. No.
18 Q. Vice-president, anything like that?
19 A. No.
20 Q. How long have you been a director of
21 Triarch?
22 A. Since we started the corporation.
23 Q. The PC?
24 A. Yes.
25 Q. And when was that?

7
1 Deiss
2 will probably know what my question is before I
3 finish it. What I'd ask you to do is pause and
4 wait for me to complete my question before you
5 start speaking, okay?
6 A. Yes.
7 Q. Otherwise Mr. Levy will be strained to
8 keep my questions and your answers separate,
9 understand?
10 A. I do.
11 Q. Thank you. By whom are you employed?
12 A. By Triarch.
13 Q. Triarch Architectural Services?
14 A. Yes.
15 Q. And what is your position at Triarch?
16 A. I'm a director.
17 Q. What do you mean by "a director"?
18 A. I don't understand your question.
19 What do you mean?
20 Q. Well, "Director" is a title?
21 A. It's a title, yes.
22 Q. What does it mean?
23 A. It means that I'm directing the
24 operations of Triarch.
25 Q. Are you an owner in Triarch?

9
1 Deiss
2 A. In the '90s. I don't remember exactly
3 what date.
4 Q. Do you recall what year?
5 A. I don't.
6 Q. Latter half of the '90s, first half of
7 the '90s?
8 A. I think it was the first half. I'm
9 not sure.
10 Q. Since 2007, have there been any
11 changes in the composition of the ownership or
12 directors of Triarch?
13 A. No.
14 Q. So in 2007, you and Mr. Corelli were
15 the only two directors?
16 MR. MANDEL: Objection
17 mischaracterizes prior testimony.
18 Q. Do you understand my question? In
19 2007, were you and Mr. Corelli the only two
20 directors for Triarch?
21 A. Yes.
22 Q. Okay. And that's remained constant to
23 the present?
24 A. Yes.
25 Q. Thank you. What's your educational

1 Deiss
2 the same address?
3 A. Yes, we are.
4 Q. Okay. The first meeting you had with
5 Mr. Voronchenko, whether it was at your offices or
6 at the apartment, who else, if anyone other than
7 Voronchenko, your partner, and yourself were in
8 attendance?
9 A. Garry Braverman.
10 Q. Anybody else?
11 A. Not that I remember.
12 Q. Who arranged that meeting, if you
13 recall?
14 A. Mr. Corelli and Mr. Braverman.
15 Q. Had you ever done any work, you
16 personally, with Mr. Voronchenko prior to that
17 September 2008 meeting?
18 A. No.
19 Q. Had you ever heard of Mr. Voronchenko
20 prior to that meeting?
21 A. No. Oh, well, I had heard about him
22 from my partner. But --
23 Q. In anticipation -- I'm sorry. In
24 anticipation of the meeting, you would have heard
25 about Voronchenko.

14 16
1 Deiss
2 A. It's a corporation that holds, I think
3 that holds the ownership of the apartment.
4 Q. Prior to the meeting in September
5 2008, had you ever heard of Medallion before?
6 A. No.
7 Q. Is Mr. Braverman, to your
8 understanding, associated with Medallion?
9 A. Yes, he is.
10 Q. Do you understand him to be a
11 principal in Medallion?
12 A. I don't know.
13 Q. Okay. Do you know what his position
14 at Medallion is?
15 A. I don't know.
16 Q. Had you ever met Mr. Braverman prior
17 to that September 2008 meeting?
18 A. No, I hadn't.
19 Q. Okay. So these were all new faces
20 regarding an entirely new project for you,
21 correct?
22 A. Yes.
23 Q. And nobody else from Triarch
24 Architectural Services attended that meeting,
25 correct?

15 17
1 Deiss
2 A. Yes.
3 MR. MANDEL: It's very helpful to the
4 court reporter if you just let him finish
5 his question --
6 THE WITNESS: Sorry.
7 MR. MANDEL: -- before you jump in. I
8 should have pointed that out earlier.
9 THE WITNESS: No, they said that but I
10 forgot.
11 MR. MCKEE: You're doing fine.
12 Q. So prior to Mr. Corelli telling you
13 about an upcoming meeting with this individual
14 named Voronchenko, you'd never heard of him.
15 A. No.
16 Q. Knew nothing of his reputation?
17 A. Nothing.
18 Q. If he has one. Knew nothing of his
19 businesses? Okay. There's an entity that's been
20 sued in this litigation called Medallion, Inc.
21 A. Yes.
22 Q. Ever hear of Medallion, Inc.?
23 A. Yes.
24 Q. What's your understanding of what
25 Medallion, Inc. is?

1 Deiss
2 A. Stephen Corelli did.
3 Q. Other than Mr. Corelli. My mistake.
4 Anybody else?
5 A. No.
6 Q. Thank you. Regardless of where that
7 meeting took place, whether it was at the
8 apartment or at your offices, what, if anything,
9 were you given by your clients, or prospective
10 clients, I should say, what were you given?
11 A. I don't remember.
12 Q. Were you given anything? Putting
13 aside whether you remember -- I'll rephrase the
14 question. My original question was, what, if
15 anything, were you given at the meeting. I
16 believe you said you don't remember.
17 A. I don't remember exactly, no.
18 Q. Were you given anything, irrespective
19 of what it may have been, were you given anything
20 tangible, any kind of document or anything?
21 A. I don't think at the meeting.
22 Q. Now, going back to what I think you
23 started to say, prior to the meeting, were you
24 provided with anything?
25 A. I don't remember.

Deiss

Q. You don't remember whether you were provided with anything at all, or you don't remember what you were provided with?

A. I don't remember that we were provided with anything at all --

Q. Okay.

A. -- at the meeting or prior to the meeting.

Q. Okay. What, if anything, were you told at that initial meeting by either Voronchenko or Braverman about the apartment?

A. That he wanted to renovate the apartment in a substantial way, and give it more character.

Q. What else did he tell you about what they wanted for their project?

A. They wanted it to look, to have an Art Deco look.

Q. Who did most of the talking at this meeting, Braverman or Voronchenko?

A. I don't remember.

Q. My understanding is, Mr. Voronchenko originally hails from Russia, is that correct, from your understanding?

1 Deiss
2 A. That's my understanding, too.
3 Q. How was his English, was he
4 understandable to you?
5 A. Yes. His English is good.
6 Q. You had no trouble understanding
7 anything he said?
8 A. No.
9 Q. What, if anything, did Voronchenko or
10 Braverman tell you about any previous work or
11 design that they had had done for them, as it
12 relates to that apartment?
13 A. He showed us images and plans that had
14 been prepared by other architects or designers.
15 Q. Yes. Let's start with the first.
16 What do you mean by "images"?
17 A. Renderings.
18 Q. What do you mean by "rendering"?
19 A. Three-dimensional architectural
20 drawings.
21 Q. Computer-generated?
22 A. Computer-generated.
23 Q. What, if anything, can you recall
24 about any of the details of those 3-D
25 computer-generated images you were shown?

Deiss

2 A. They were very bad.

3 Q. Okay. So you felt they were of poor

4 quality.

5 A. Extremely poor quality.

6 Q. Crude?

7 A. I don't want to say that about another

8 architect's work. But --

9 Q. I mean, "Crude" as in primitive, not

10 vulgar --

11 A. Pretty crude.

12 Q. So less than a fully-formed idea,

13 would you say?

14 A. Yes.

15 Q. Who is the author or authors of these

16 crude or primitive 3-D computer-generated images?

17 A. I don't know. There was some Russian

18 writing on it, but I don't speak Russian.

19 Q. So it had Cyrillic letters?

20 A. Some of them had some Cyrillic

21 letters.

22 Q. Yes. And to the extent you can

23 remember, what were they 3-D images of? What did

24 they show?

25 A. The interior of the apartment, I

1 Deiss
2 Q. Yes. And in connection with that, did
3 either he or Braverman, since they were giving you
4 this material, did they tell you that this was
5 something, a look that they wanted or something
6 that they hated, or something to avoid, did
7 they --
8 A. I don't remember. I don't remember,
9 really.
10 Q. And they never gave you any indication
11 as to why they were giving you these pictures,
12 they just put them in front of you?
13 A. Well, I have to make an assumption.
14 Q. Okay.
15 A. Since they were going to hire another
16 architect, I imagine they were not pleased with
17 what they were getting.
18 Q. Okay. But did they say that, "This is
19 what the other architect gave us and we are not
20 pleased with these depictions"?
21 A. I don't remember. It was four years
22 ago. I mean, I don't remember.
23 Q. In preparation for today's deposition,
24 did you review any documents?
25 A. Some.

1 Deiss
2 A. Yes.
3 Q. So those binders were put together
4 after Voronchenko terminated the relationship?
5 A. Yes.
6 Q. So they were not necessarily created
7 contemporaneous with the work you were doing.
8 A. No.
9 Q. When those binders were put together,
10 were any materials excluded, thrown away,
11 discarded?
12 A. Not that I know. We were trying to be
13 very thorough because we wanted to have a record
14 of what the whole process had been.
15 Q. Yes. Did Triarch, back in 2009, say,
16 February 2009, did it have any materials related
17 to this project maintained on its computer system?
18 A. Yes.
19 Q. Does it still maintain any information
20 related to this project on its computer system?
21 A. Yes.
22 Q. And what is on the computer system
23 that's related to this project?
24 A. We have e-mails, we have -- I guess --
25 we have substantial e-mail correspondence. We

1 Deiss
2 Q. Did you go back through your project
3 file?
4 A. No, I didn't.
5 Q. Did you review -- you and your
6 attorney presented with a roll of drawings. Did
7 you review those drawings before coming here
8 today?
9 A. No, I know them by heart, pretty much.
10 Q. And I was -- I'll represent to you
11 that your predecessor counsel on this case
12 provided a volume of documents which appear to
13 have come out of binders.
14 A. Yes.
15 Q. They look like e-mails, photos,
16 computer-generated drawings.
17 Did you maintain -- you, Triarch --
18 maintain binders with such materials on this
19 project?
20 A. We have project binders. Those
21 binders have been compiled mostly after we
22 finished the project.
23 Q. And when you say after you finished
24 the project, was Triarch terminated by
25 Voronchenko?

1 Deiss
2 have the drawings. We have drawing revisions, we
3 have the renderings, we have the correspondence
4 for the renderings, the correction of the
5 renderings, the generation of the renderings.
6 We have still most of the material in
7 our computer.
8 Q. Did you ever do a dump of the entirety
9 of whatever is on your computer onto a disc or
10 discs and turn them over to your counsel?
11 A. I don't know. I don't think so. Can
12 be done at the present time.
13 Q. Since this litigation began, has any
14 material been deleted or removed from your
15 computer system?
16 A. No. Maybe some of the e-mail
17 correspondence is not necessarily there. Mine is
18 still there, I'm sure. But some of the people
19 working in the office may not have kept it.
20 Q. Was it the – was there any kind of
21 policy or practice back in the 2008-2009 time
22 frame for Triarch to, for employees to maintain
23 copies of all e-mail correspondence generated on a
24 project?
25 A. No, we don't have a policy for that.

1 Deiss
2 eight-and-a-half-by-eleven copy of a floor plan?
3 A. It was a drawing -- well, it was a --
4 it was a floor plan like that, but it didn't have
5 a title sheet, it wasn't a part of a drawing set
6 or anything.
7 Q. I see. So it was literally just the
8 schematic of the floor itself.
9 A. Yes. No dimensions, nothing.
10 Q. And what did it show? Did it show
11 existing conditions?
12 A. Existing conditions. One showed an
13 existing condition.
14 Q. Yes. What did the other show?
15 A. It showed a proposed condition.
16 Q. Were you told who the author was?
17 A. It said on the plan. Garth Hayden.
18 Q. It said Garth Hayden. Did you ask who
19 Garth Hayden was when you received these?
20 A. No, I did not.
21 Q. Prior to receiving these two
22 eight-and-a-half-by-eleven floor plans with the
23 name Garth Hayden on it, had his name been
24 mentioned?
25 A. Yes.

1 Deiss
2 Garth Hayden was the filing architect and he
3 submitted plans to the DOB and building
4 management?
5 A. Yes.
6 Q. What was the purpose of, as you
7 understood it, of submitting plans to the DOB?
8 A. He was proposing changes to the
9 entrance of the apartment.
10 Q. Yes? And in so doing, why was it
11 necessary, as you understood it, to make such a
12 submittal to the DOB?
13 A. Because the building requested it.
14 Q. The building requested that DOB review
15 be obtained?
16 A. Yes.
17 Q. Is that customary, for --
18 A. It's customary, yes, for this type of
19 building and for this type of apartment.
20 Q. Okay. And it was also, prior to that,
21 is it your understanding that Mr. Hayden's drawing
22 or drawings were submitted to management for their
23 review? Building management?
24 A. Yes.
25 Q. And again, that's something that's

1 Deiss
2 Q. By whom?
3 A. By Mr. Voronchenko or Mr. Braverman
4 I don't remember who said that.
5 Q. And did they mention Garth Hayden
6 during the first meeting you had?
7 A. I don't remember.
8 Q. How long into your relationship, "You"
9 meaning Triarch, with Mr. Voronchenko and
10 Medallion did the name Garth Hayden come up?
11 A. Pretty much in the beginning.
12 Q. And what were you told about Garth
13 Hayden?
14 A. That he was the filing architect for
15 the apartment.
16 Q. What does that mean, or what did you
17 understand that to mean?
18 A. That he was -- he had prepared plans
19 that had been filed with the Department of
20 Buildings and the board of the building, the
21 management -- and the management.
22 Q. Yes?
23 A. Those plans were proposing certain
24 modifications to the apartment.
25 Q. Yes. So your understanding was that

1 Deiss
2 necessary in these type of buildings?
3 A. It is.
4 EXH (Defendant Exhibit 1, four-page set of
5 drawings Bates numbered GH 1 through GH 4
6 entitled, "Sheets A-1 through A-4," 515 Park
7 Avenue, 21st floor", marked for
8 identification, as of this date.)
9 Q. Ms. Deiss -- is it Ms. Deiss?
10 A. Ms. Deiss, yes.
11 Q. I'm going to show you a four-page
12 collection of drawings Bates numbered GH 1 through
13 GH 4 entitled, "Sheets A-1 through A-4," 515 Park
14 Avenue, 21st floor." I ask you to look at those
15 for a moment.
16 (Witness and counsel perusing
17 document.)
18 A. Um-hum.
19 Q. And looking at sheet 1, A-1, which is
20 what you're looking at right now, have you ever
21 seen that before?
22 A. Yes, I have.
23 Q. When was the first time you saw that
24 document?
25 A. I don't remember.

1 Deiss
 2 within the past two months you've seen it?
 3 A. Within the past year or so.
 4 Q. Directing your attention to sheet
 5 A-2 -- and A-2 is entitled, "Construction plan,"
 6 correct?
 7 A. Yes, it is.
 8 Q. Have you ever seen this sheet before?
 9 A. Yes, I have.
 10 Q. Okay. And when was the first time you
 11 saw this sheet?
 12 A. Again, recently.
 13 Q. Sometime after the termination of the
 14 contractual relationship?
 15 A. Yes.
 16 Q. Okay. And at no time during your work
 17 did you ever look at or review this particular
 18 sheet, correct?
 19 A. Not that I remember.
 20 Q. I'll direct your attention to sheet
 21 A-3, and you'll agree with me again that this has
 22 the DOB bar codes on it, correct?
 23 A. Yes, it does.
 24 Q. And it's a copy, but you see that
 25 there's, when the DOB receives and approves a set

1 Deiss
 2 them or not, you don't remember ever just, at
 3 least, seeing them?
 4 A. I don't.
 5 Q. And why don't we look at the last page
 6 as well. Well, before we go on, what do you
 7 understand this page or sheet A-3 to be?
 8 A. Elevations. And a floor plan of the
 9 foyer.
 10 Q. So these are just, the rest of the
 11 depictions on the main body of this, these are
 12 elevations of -- of what? If you can tell me.
 13 A. This is the living room (indicating).
 14 Q. Looking at the top? Top center?
 15 A. Yes.
 16 Q. This is an elevation of the living
 17 room?
 18 A. Yes, it is.
 19 Q. And it shows in general some finishes
 20 that would be included; correct?
 21 A. Yes.
 22 Q. So for example, as you look at it, it
 23 shows wood molding along the top, correct?
 24 A. Yes. Correct.
 25 Q. And it looks like there are some

1 Deiss
 2 of plans, they actually punch it, correct?
 3 A. Yes, they do.
 4 Q. And as you see down here as you look
 5 at it in the lower right, the word "approved"?"
 6 A. Yes.
 7 Q. It looks like a date of 6/26/08.
 8 Do you see that date?
 9 A. Yes, I do.
 10 Q. Now, when you were involved in the
 11 project prior to the termination of the
 12 relationship in roughly February 8, 2009, did you
 13 ever review this particular drawing?
 14 A. Not that I remember.
 15 Q. Okay. And do you know whether your
 16 office was in possession of this set of, just
 17 these four sheets of drawings prepared by Garth
 18 Hayden?
 19 A. I don't know.
 20 MR. MANDEL: At any time?
 21 MR. McKEE: No, during the project.
 22 Q. Okay. So you don't recall whether you
 23 had --
 24 A. I don't.
 25 Q. And whether you personally reviewed

1 Deiss
 2 panels, and there's a notation, "Leather insert,
 3 wood panel."
 4 A. Yes.
 5 Q. And then along the bottom it looks
 6 like it says, "8-inch wood base."
 7 A. Yes.
 8 Q. What's the purpose of a detail like
 9 that, in general?
 10 A. That's not a detail. I don't know.
 11 In this particular case, there's no reason to file
 12 the drawings this way.
 13 Q. Well, you anticipated where I was
 14 going to go with my question. But we'll get to
 15 that.
 16 But you said this isn't a detail.
 17 What would you call this?
 18 A. An elevation.
 19 Q. Just an elevation. Okay. And then in
 20 the center, what is that? Another elevation?
 21 A. Another elevation.
 22 Q. And could you tell us what that's an
 23 elevation of, what part of the project?
 24 A. It looks like it's -- um -- on the
 25 other side of the living room throughout the

1 Deiss

2 foyer.

3 Q. So it's a different elevation but,
4 again, of the same room as you understand.

5 A. Yes.

6 Q. Now, over here on the right, say, the
7 right one-third of sheet A-3, what is that?

8 A. Handicapped notes.

9 Q. And that relates to door openings and
10 access?

11 A. Yes.

12 Q. And I direct your attention now to
13 sheet A-4 of this set, and have you ever seen this
14 before?

15 A. Not that I remember. I mean, not --
16 not -- recently I have seen it, yes.

17 Q. But not when Triarch was working on
18 the project?

19 A. I don't remember now.

20 Q. And this is entitled "Reflected

21 Ceiling Plan"?

22 A. Yes.

23 Q. And what's the pt
24 ceiling plan?

25 A. To show lighting



1 Deiss

2 Q. Kind of a birds-eye view of where
3 walls would be positioned?

4 A. Yes.

5 Q. Would you say that the level of detail
6 that's provided in these drawings is something
7 above and beyond just what would be required of a
8 filing architect as you explained a few minutes
9 ago?

10 A. Barely.

11 Q. Barely. But it's something more than,
12 correct?

13 A. Not really.

14 Q. Okay. So you're changing. You're
15 going backwards here. So you started by saying
16 that they don't look like filing plans to now
17 "barely," and now "not really."

18 A. I did not say that.

19 MR. MANDEL: Objection.

20 MR. McKEE: That's fine.

21 Q. Let's go to sheet A-1 of this series
22 of drawings. This is the existing
23 conditions/demolition plan, correct?

24 A. Yes.

25 Q. Now, when you said changes to the

1 Deiss

2 lights that are being added

3 Q. Yes. And there's :
4 here a wood door schedule, correct?

5 A. Yes.

6 Q. And then the lower right --

7 A. Handicapped notes.

8 Q. Some more handicapped notes. And --
9 okay. Now, I'm not going to say this right,
10 because you started to say that -- I'll just go
11 back to how I was going to ask the question.

12 Now, you said a few minutes ago that
13 you were told Garth Hayden was retained as the
14 filing architect, correct?

15 A. Yes.

16 Q. Now, and in that capacity, he was,
17 really had to do with changes to the entrance,
18 correct? You said --

19 A. That's what I was told.

20 Q. Okay. Now, the two drawings that you
21 received, the two eight-and-a-half-by-eleven
22 drawings that you received which you understood to
23 have been generated by Garth Hayden, did they have
24 any of the level of detail that we see here?

25 A. No. They were floor plans.

1 Deiss

2 entrance, you meant the foyer, correct?

3 A. Correct.

4 Q. When you mentioned or said that, did
5 you also mean to include removal of the entire
6 hallway that separated the elevator from the
7 foyer?

8 A. That is the entrance.

9 Q. So your concept of modifications to
10 the entrance includes that, removal of that
11 hallway, separating the elevators from the foyer,
12 correct?

13 A. Correct.

14 Q. Did it also include modifications to
15 what we might term the bedroom hallway where it
16 adjoins the foyer and the elevator entrance?
17 Would you still consider that to just be
18 modification to the entrance?

19 A. Yes.

20 Q. Okay. And then how about
21 modifications or changes to the wall that
22 separated the foyer from what was originally
23 designated as bedroom 3, would you include that as
24 modifications to the entryway?

25 A. Yes.

1 Deiss

2 Q. What about removal of the wall between
 3 bedroom number 3 and under that, in parentheses,
 4 it says "(library)," removal of that wall that
 5 separates bedroom 3 from the living room, would
 6 you consider that to be modification to the --

7 A. No.

8 Q. -- entryway? You have to let me
 9 finish my question.

10 A. I thought it was finished.

11 Q. No. You have to understand, I make
 12 fun of the south but I lived down there a long
 13 time so I tend to speak a little slowly sometimes.
 14 So just take a pause, and I'll get my question
 15 out, okay?

16 A. Okay.

17 Q. Great. Now, would you agree with me,
 18 or for purpose of my questions, we'll call this,
 19 this says, "Hallway number 2." We'll call that
 20 the bedroom hallway, okay?

21 A. Okay.

22 Q. So if I say "the bedroom hallway," and
 23 they appear on your plans, too, you'll know that
 24 I'm talking about this hallway that runs down to
 25 the master bedroom and the other two bedrooms,

1 Deiss

2 Q. When you first went to the apartment,
 3 was -- had any work, any demolition work been done
 4 on it yet?

5 A. No.

6 Q. Actually, I should precede that
 7 question. I assume you went to the apartment
 8 because you weren't sure if your first meeting
 9 happened at the apartment or at the -- at your
 10 offices. You did go to the apartment.

11 A. Yes, we did.

12 Q. You couldn't tell me how many times
 13 you went to the apartment, you personally?

14 A. A few times. I don't know exactly how
 15 many times.

16 Q. More than five?

17 A. No.

18 Q. Five or less?

19 A. Five or less.

20 Q. Okay. When you first went there, was
 21 this partition between bedroom 3 and the living
 22 room still up?

23 A. Yes.

24 Q. And the hearth, was there a hearth
 25 here in the living room?

1 Deiss

2 okay?

3 A. Okay.

4 Q. Great. Now, you see that there's
 5 removal of a doorway here (indicating) or -- yes,
 6 there's removal of a doorway and a partial wall
 7 towards the left in the bedroom hallway, do you
 8 see that?

9 A. Yes.

10 Q. Would you consider that a modification
 11 to the entry or foyer?

12 A. No.

13 Q. And then down here, there's -- down
 14 here to your left, you come down the bedroom
 15 hallway, there's some more partitions or closet
 16 openings which are being slated for demolition, do
 17 you agree with that?

18 A. Yes.

19 Q. Is that modification to the foyer or
 20 entryway?

21 A. No.

22 Q. There's also reference in the living
 23 room to removal of fireplace box, mantle, hearth,
 24 etc. Do you see that?

25 A. Yes.

1 Deiss

2 A. I think so.

3 Q. I see. So no demolition had occurred
 4 yet, correct?

5 A. I don't think so.

6 Q. Now, looking at sheet A-2, there's
 7 portions on here which have a very dark line,
 8 correct?

9 A. Yes.

10 Q. And those would indicate what, new
 11 construction?

12 A. Yes.

13 Q. And they show new construction more or
 14 less outlining two of the four walls of bedroom
 15 number 3, correct?

16 A. Yes.

17 Q. And ultimately that's where the
 18 library was designed to go, correct?

19 A. That's correct.

20 Q. And this opening between bedroom
 21 number 3 or library, and the living room, is this
 22 a designation of pocket or sliding doors?

23 A. Pocket doors.

24 Q. Pocket doors. They slide back into a
 25 recess?

1 Deiss
2 before?
3 A. Yes, I have.
4 Q. If you go to the last page -- if you
5 go to page 4, there's a signature there for the
6 architect. Do you see that?
7 A. I do.
8 Q. Do you recognize the signature on
9 there?
10 A. I do.
11 Q. And whose signature do you recognize
12 that to be?
13 A. Stephen Corelli.
14 Q. Your partner, correct?
15 A. Yes.
16 Q. Did you have any involvement in
17 negotiating any of the terms of the contract?
18 A. No, I did not.
19 Q. Prior to doing any work on the
20 project, did you review it at all?
21 A. No, I did not.
22 Q. Prior to today, have you ever reviewed
23 the terms of this contract?
24 A. Yes, I have.
25 Q. When did you first review it?

54 56
1 Deiss
2 construction phase.
3 Q. Okay. And then is that separate and
4 apart from interior design services?
5 A. Hard to tell.
6 Q. Do you draw a distinction between
7 architectural and interior design services?
8 A. No.
9 Q. Earlier, you testified about your
10 background as having a degree in interior
11 architecture, which goes toward, more towards
12 construction, and then later obtaining a degree in
13 interior design, which goes more towards
14 decoration.
15 Does interior design services at all
16 relate to the decoration aspects of your work?
17 A. Yes, it does.
18 Q. If we go to the next page, under
19 article 1, "Architect's Responsibilities," do you
20 see that?
21 A. Yes.
22 Q. And it says, "interior Design."
23 A. Yes.
24 Q. It says, "The architect's services
25 include the following consulting services:

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1 Deiss
2 A. A week ago.
3 Q. That was the first time, to your
4 recollection?
5 A. Yes.
6 Q. And why did you review it a week ago?
7 A. Because I was going to be deposed.
8 Q. Okay. So in anticipation of being
9 deposed, you thought it prudent to review this.
10 A. Yes, I did.
11 Q. Okay. Now, on the first page, at the
12 bottom, under the title, "The Owner and Architect
13 Agree As Follows," do you see that?
14 A. Yes.
15 Q. And it begins, "The architect will
16 provide a full scope of architectural and interior
17 design services." Did I read that correctly?
18 A. Yes.
19 Q. What, if any, is your understanding of
20 what is meant by "a full scope of architectural
21 services"?

22 A. Schematic design, design development,
23 construction documents.

24 Q. Anything else?

25 A. Bidding and negotiation in

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1 Deiss
2 "Interior design?"
3 Would that relate to the provision of
4 decorating?
5 A. Yes, I assume so.
6 Q. As a partner in Triarch, do you have
7 occasion to negotiate and execute contracts on its
8 behalf?
9 A. I do.
10 Q. And do you understand or do you have
11 an understanding that the inclusion of a separate
12 phrase, "Interior design," is meant to indicate a
13 different type of work than what might be
14 considered architectural?
15 A. That depends on the client and on the
16 contract.
17 Q. Looking at this contract, which on the
18 first page references architectural and interior
19 design services, would you say that that
20 encompasses two different scopes of work?
21 A. I don't know.
22 Q. On page two, under where it says,
23 "Interior Design," there's reference to, "Based on
24 the approved project requirements, the architect
25 shall develop a design."

1 Deiss 2 Do you see that, second sentence? I 3 can point it out to you. 4 A. I have it, yes. 5 Q. "Based on the approved project 6 requirements, the architect shall develop a 7 design." 8 Do you see that? 9 A. Yes, I do. 10 Q. What do you understand is meant by 11 "design" in that context? 12 A. I would understand -- I would think in 13 this particular case, it means that I should 14 develop an idea. The design here really means an 15 idea about how the project is going to look and 16 be. A creative idea. 17 Q. Does it encompass something more than 18 the spatial aspects of the project? 19 A. Yes. 20 Q. So it goes beyond merely the 21 positioning of walls or doors to paint colors, 22 textures -- 23 A. Materials. 24 Q. -- materials. Okay. And the next 25 sentence references that, "Upon owner's approval	1 Deiss 2 Triarch was going to act as the owner's 3 representative and provide administration of the 4 contract? 5 A. Yes. It is. 6 Q. And the type of duties that -- 7 A. Contract between the owner and the 8 contractor. You have to continue this. 9 Q. Yes. And the type of duties that the 10 architect would carry out during the construction 11 phase are more or less spelled out in the last 12 sentence of that provision? 13 A. Yes. 14 Q. If you go down to article 3, it's 15 entitled, "Use of Documents," do you see that? 16 A. Yes. 17 Q. The first sentence references that, 18 I'm paraphrasing, let's say, materials prepared by 19 the architect "are instruments of the architect's 20 service and are for the owner's use solely with 21 respect to this project." 22 Do you see that? 23 A. Yes. 24 Q. What's your understanding of what's 25 meant by "instruments of service"?
59	61
1 Deiss 2 of the design, the architect shall prepare 3 construction documents indicating requirements for 4 construction of the project." 5 Do you see that reference? 6 A. I do. 7 Q. And again, reference there to "the 8 design," does that, again, encompass something 9 more than just the spatial aspects of the project? 10 A. Yes, it does. 11 Q. Something above and beyond location of 12 walls or maybe materials that walls or framing 13 might require, into something inclusive of 14 textures and finishes that go on walls -- 15 A. Yes. 16 Q. -- or floors or ceilings. Okay. And 17 then the last paragraph in article 1 references, 18 "Construction Phase." 19 Do you see that? It says, "During the 20 construction phase"? Last paragraph under, 21 "Article 1." 22 A. Yes, I do. I'm just reading it. Yes, 23 I do. 24 Q. Okay. So is it your understanding 25 that, as part of your contractual scope of work,	1 Deiss 2 A. My understanding is that the owner is 3 allowed to use them in order to build the project. 4 Q. And the inclusion of the word "solely" 5 with respect to this project means that the owner 6 can't then take that same set of plans and go use 7 it to build, say it was a house plan, he couldn't 8 just go and keep duplicating it on house after 9 house after house. 10 A. That's what it says. 11 Q. Yes. Okay. And then the last 12 sentence in that provision begins, "When 13 transmitting copyright protected information," do 14 you see that? 15 A. Yes, I do. 16 Q. What's your understanding of what that 17 last provision means? 18 A. My understanding is that you have to 19 be the owner of the copyright in order to be able 20 to use the information in any -- in any other way. 21 Q. Do you have, to your understanding, if 22 the owner were to provide you with any documents 23 on a project, as you said, you were provided with 24 two eight-and-a-half-by-eleven drawings which you 25 understood to be from Garth Hayden.

1 Deiss
2 be, where openings are going to be, what the floor
3 is going to look like and the walls, all that is
4 supposed to be hashed out by the time you complete
5 design development, right?
6 A. Ideally, it is.
7 Q. Now, I notice your fee is based upon
8 different percentages for each of the phases,
9 correct?
10 A. Correct.
11 Q. That payment comes upon completion of
12 that particular phase or at the start?
13 A. At completion.
14 Q. Okay. So for example, was Triarch
15 paid its initial deposit of \$21,250?
16 A. Yes, we were.
17 Q. Okay. And then, upon signing the
18 contract, you were in schematic design phase,
19 correct?
20 A. Correct.
21 Q. And upon completion of schematic
22 design phase, under the contract, you should be
23 paid 15 percent, correct?
24 A. Correct.
25 Q. And then you move into design

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1 Deiss
2 don't see a projected cost of construction, do
3 you?
4 A. No.
5 Q. When you first -- "you" meaning
6 Triarch -- first contracted with Medallion, did
7 you have in your own mind an understanding of what
8 the projected cost of construction was to be?
9 A. I think there was discussion of
10 \$800,000. But the -- the budget was never really
11 discussed. It was not an issue.
12 Q. When you say it was not an issue, it
13 wasn't an issue for you, is that what you're
14 saying?
15 A. For the client.
16 Q. The client -- by "the client," do you
17 mean Medallion or Voronchenko?
18 A. Voronchenko.
19 Q. So in that initial meeting you had
20 with Voronchenko, did he say anything about
21 budget?
22 A. No.
23 Q. At any of the meetings which may have
24 predated the contract itself, was there any
25 discussion of budget?

1 Deiss
2 development phase, correct?
3 A. Correct.
4 Q. And then upon completion of that
5 phase, you were to be paid 25 percent of your
6 overall fee, correct?
7 A. That's what the contract says, yes.
8 Q. Yes. And so on through the rest of
9 the project.
10 A. And so on.
11 Q. Okay. And that's how you typically do
12 it, correct?
13 A. Correct.
14 MR. McKEE: Just bear with me a
15 second.
16 (A pause in the proceedings.)
17 Q. Now, your contract does not -- well,
18 correct me. Does your contract provide a
19 projected cost of construction for this project?
20 A. Um -- I don't know.
21 (Witness perusing document.)
22 A. I don't know.
23 Q. Okay.
24 A. If it was in here, it's in here.
25 Q. Well, looking at it right now, you

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1 Deiss
2 A. I don't know. I was not there.
3 Q. When you say you weren't there, what
4 do you mean?
5 A. I meant after -- I think I remember I
6 met Voronchenko after the contract was made.
7 Q. Okay. So since questioning began this
8 morning, and I asked you about that initial
9 meeting, that initial meeting I was asking about,
10 was that the first meeting involving Triarch and
11 Medallion or had a meeting occurred without you
12 being present?
13 A. I think there was a meeting without me
14 being present.
15 Q. Were you ever informed of who was at
16 that meeting where you weren't present?
17 A. Mr. Corelli and Mr. Braverman. I
18 don't know if Mr. Voronchenko was there, too.
19 Q. Okay. And the connection between
20 Voronchenko and Corelli runs through Voronchenko,
21 not through Medallion.
22 A. Yes.
23 Q. Were you ever given any document or
24 anything which referenced an \$800,000 estimated --
25 estimated \$800,000 cost of construction?

1 Deiss
 2 fits within your 17 percent fee, yes?
 3 A. Yes.
 4 MR. MCKEE: Now, when I obtained a
 5 copy of Triarch's project files,
 6 unfortunately, I did not get them
 7 Bates-stamped. So I'll represent that the
 8 documents which I'm about to show you came
 9 in the kind of groupings that I'm about to
 10 show you, at least when I got them back from
 11 my printer.
 12 I'm going to ask our stenographer,
 13 Mr. Levy, to mark this collection of
 14 documents as D-3.
 15 EXH (Defendant Exhibit 3, set of floor
 16 plans, marked for identification, as of this
 17 date.)
 18 MR. ISRAEL: Before you give it to
 19 her, can I see it? I just want to know what
 20 we're talking about.
 21 (A pause in the proceedings.)
 22 Q. Okay, Ms. Deiss --
 23 A. Yes.
 24 Q. -- I'm going to hand you a collection
 25 of documents. I'm going to ask you if you can

1 Deiss
 2 A. Yes.
 3 Q. And on the back side of that, we see
 4 what appear to be two computer-generated
 5 depictions of, would that be the foyer?
 6 A. Yes, it is.
 7 Q. And it shows -- it shows the floor and
 8 ceiling and how the walls might look, yes?
 9 A. Correct.
 10 Q. And then across the bottom under
 11 there, labeled A through H, there's different
 12 materials, correct?
 13 A. Correct.
 14 Q. For example, there's reference to
 15 Palisander. That's the type of wood?
 16 A. Yes, it is.
 17 Q. Is that a specific species of wood or
 18 is that a cut?
 19 A. It's a species of wood.
 20 Q. And then to the left, there's what
 21 looks like an overall floor plan, correct?
 22 A. Correct.
 23 Q. And below that is a slightly larger
 24 layout of the foyer, correct?
 25 A. Correct.

1 Deiss
 2 please allow your attorney to look at it first,
 3 but if you can just tell me generally what these
 4 are.
 5 A. These are floor plans.
 6 Q. Okay. You're pointing, it's the
 7 second or third page in, there's what looks like
 8 to a layperson, it looks like a photograph. Are
 9 those actually photographs or are those
 10 computer-generated?
 11 A. Computer-generated, right.
 12 Q. And then to the side, there's a floor
 13 plan, correct?
 14 A. That's correct.
 15 Q. And --
 16 A. On the bottom are materials.
 17 Q. And for example, this is the back of
 18 the first page or cover page.
 19 A. Um-hum.
 20 Q. The cover page, you'd agree with me,
 21 is a black background with the name of the
 22 property, and it says, "Interior renovations,"
 23 correct?
 24 A. Correct.
 25 Q. And it has Triarch's logo on it?

1 Deiss
 2 Q. All right. And we see that repeated
 3 on the second page here. Now, if we go to the
 4 back of the second page, there's, this is another
 5 computer-generated depiction?
 6 A. Yes, it is.
 7 Q. And that would be the living room
 8 wall?
 9 A. Right.
 10 Q. And behind that wall would be the
 11 dining room?
 12 A. Yes.
 13 Q. And on there we see a
 14 computer-generated depiction of a TV hanging
 15 there, and a couple of sconces on either side,
 16 yes?
 17 A. Yes.
 18 Q. And then again, there -- the TV, for
 19 the record, is showing Humphrey Bogart in the
 20 movie, "Casablanca." And then on the bottom we
 21 see some material selections, again, yes?
 22 A. Yes.
 23 Q. And again, a floor plan, and it seems
 24 to repeat itself for the next several pages, do
 25 you agree with that?

1 Deiss
2 A. Yes, I do.
3 Q. Showing different angles of different
4 rooms, correct?
5 A. Yes.
6 Q. Then we come to a room which has some
7 red features to it, and would you call that a
8 barrel or vaulted ceiling?
9 A. Vaulted.
10 Q. Vaulted ceiling with some, what look
11 like reddish tones, reddish/brownish tones.
12 A. Correct.
13 Q. And that would be the library?
14 A. Yes, it is.
15 Q. And that shows some bookcases along
16 one wall? Yes?
17 A. Yes.
18 Q. And some furniture depicted in there?
19 A. Yes.
20 Q. Are these materials that were prepared
21 by Triarch?
22 A. Yes, they are.
23 Q. Did you subcontract out the
24 computer-generated photographs that we're looking
25 at?

1 Deiss
2 Q. Towards the end of this first group
3 there's a room that has kind of a tannish
4 off-color with crosshatching on it. What is that,
5 is that the bedroom?
6 A. No, that's the dining room.
7 Q. That's the dining room. Well, it's
8 shown here on the floor plan, correct?
9 A. Yes.
10 Q. And then as we flip back through this
11 document, we see some more copies of similar
12 depictions, correct?
13 A. Yes, correct.
14 Q. We're looking at a page now when shows
15 what would appear to be the master, or a portion
16 of the master bath, correct?
17 A. Correct.
18 Q. And as you look at it, the tub is
19 center, correct?
20 A. Correct.
21 Q. Off to the right are the -- is the
22 double sink, correct?
23 A. Correct.
24 Q. And that tub that's depicted there,
25 was that a preexisting tub, a new tub?

1 Deiss
2 A. New tub.
3 Q. New tub. Same location as original?
4 A. Yes.
5 Q. A few pages back we see a white room,
6 whitish room, maybe a slight green undertones in
7 the wall coverings, a couple of chairs, white
8 bedspread, would that be the master bedroom?
9 A. Yes, it is.
10 Q. I see that there's a drape with a
11 valence here; is that --
12 A. Yes.
13 Q. -- is that something that would
14 typically be suggested as part of your scope of
15 work, "Your" meaning Triarch?
16 A. The drape?
17 Q. Yes, the drapes, is that --
18 A. In this particular -- in this
19 particular project, it would be, yes.
20 Q. Okay. What about the furniture, was
21 the purpose of including depictions of furniture
22 merely to show how pieces of furniture work in a
23 given space or was it to suggest a particular
24 piece of furniture as well?
25 A. Both things. It was suggested -- it

1 Deiss
 2 was done to suggest a particular character more
 3 than a particular piece of furniture.
 4 Q. So, but as far as the product that you
 5 were preparing for your client, you would consider
 6 drapes or shades to be part of, say, or similar to
 7 floor finishes, wall finishes?
 8 A. Not necessarily. We do this for the
 9 whole image, for the drawing.
 10 Q. Some of the photographs have what
 11 appear to be visual art, or artwork.
 12 A. Yes.
 13 Q. Are these, for instance, we're looking
 14 at the living room here, between the two windows.
 15 There's what I'll call kind of Art Deco-ish
 16 looking picture.
 17 A. Um-hum.
 18 Q. Is that something that Voronchenko had
 19 or you just selected that --
 20 A. Yeah, we select that had as being part
 21 of the image.
 22 Q. It was selected as being part of the
 23 style and the colors, but not for that in
 24 particular?
 25 A. No. To be part of the whole --

1 Deiss
 2 A. No.
 3 Q. Voronchenko never sent any depictions
 4 of what he wanted the door to look like?
 5 A. No, he did not.
 6 Q. How about any of his intermediaries,
 7 anyone from either Russia or Italy, they never
 8 forwarded any e-mails with attachments?
 9 A. No. We did send them to them. They
 10 didn't send them to us.
 11 Q. I see. Looking at the foyer, there's
 12 a floor detail there?
 13 A. Yes.
 14 Q. Now, is that a new detail or is that
 15 what the preexisting floor looked like?
 16 A. That's a new detail.
 17 Q. What would you do with these
 18 computer-generated images? What was the purpose
 19 of creating them?
 20 A. Sorry?
 21 Q. What was the purpose of creating these
 22 computer-generated images?
 23 A. Mr. Voronchenko had a hard time
 24 understanding architectural plans. He needed to
 25 have visual -- he needed to see everything

1 Deiss
 2 Q. Scheme?
 3 A. -- scheme, yes.
 4 Q. I see. Now, we're looking at a
 5 depiction here of the library, correct?
 6 A. Correct.
 7 Q. We're about midway through this
 8 package and it appears to be looking towards the
 9 windows, correct?
 10 A. Yes, correct.
 11 Q. The doors. The doors appear to be
 12 metal with some kind of leather and then, I'll
 13 call them metal nails or tacks along them?
 14 A. Yes, um-hum. Correct.
 15 Q. Is that an idea that was thought up by
 16 Triarch or did Mr. Voronchenko have suggestions
 17 about what he wanted?
 18 A. Both ways.
 19 Q. I see. And that detail is carried
 20 over to the base of the bookcase. Again, is that
 21 something that Triarch suggested or --
 22 A. Triarch.
 23 Q. Because Mr. Voronchenko had some
 24 specific ideas about what he wanted on that wall,
 25 correct, on that door?

1 Deiss
 2 three-dimensionally. He needed to have drawings.
 3 Q. You mean he needed to have images.
 4 A. Images.
 5 Q. Rather than the drawings.
 6 A. Well, these are drawings, basically.
 7 These images are drawings.
 8 Q. Now, typically, in a project such as
 9 this where you're providing interior design
 10 services, do you provide computer-generated images
 11 of how certain finishes and materials will look?
 12 A. Not typically. Typically, no.
 13 Q. What's the criteria for when you do or
 14 don't?
 15 A. The client has to specifically request
 16 them.
 17 MR. MCKEE: Let's mark this.
 18 EXH (Defendant Exhibit 4, presentation
 19 book, marked for identification, as of this
 20 date.)
 21 MR. MCKEE: Off the record for a
 22 minute.
 23 (Discussion off the record.)
 24 Q. I'm going to hand you, Ms. Deiss,
 25 what's been marked as Exhibit 4. And I ask you if

1 Deiss 2 you can identify that. 3 (Handing document to witness.) 4 A. Yes. 5 Q. And what is that? 6 A. This is a book we prepared for the 7 client. 8 Q. And was that given to the client as 9 part of a presentation? 10 A. Yes, it is. It was. 11 Q. And were you at that presentation? 12 A. Yes, I was. 13 Q. Was Mr. Corelli at that presentation? 14 A. Yes, he was. 15 Q. Was anybody else from Triarch at that 16 presentation? 17 A. No. 18 Q. Where was that presentation held? 19 A. At Mr. Voronchenko's apartment. 20 Q. At the apartment in question or some 21 other place? 22 A. At the apartment in question. 23 Q. And so as part of the presentation, 24 did you and Mr. Corelli and Mr. Voronchenko walk 25 around the apartment and you explained how each of	1 Deiss 2 they had very unrealistic time requirements. 3 Q. How about budget, was there ever any 4 dispute with either Voronchenko or through 5 Braverman about where the anticipated budget was 6 going to go on this project? 7 A. No. 8 Q. Do you recall ever seeing or getting 9 an e-mail from Braverman where he threatened to 10 pull the plug on this whole project because the 11 budget had ballooned to over \$2 million? 12 A. I remember seeing an e-mail, yes. 13 Q. In any of your discussions with 14 Voronchenko or with Braverman, did you ever talk 15 about the need to bring the overall scope of the 16 work down because the budget was getting too high? 17 A. No. This was shortly before our final 18 meeting. It was never discussed. 19 Q. Okay. Was Braverman at this meeting, 20 this presentation? 21 A. Yes. 22 Q. Who else besides the four people that 23 you just mentioned were there? 24 A. I don't remember anybody else. 25 Q. How about any contractors, were any
1 Deiss 2 these images fit into how the project was going to 3 go? 4 A. Yes. 5 Q. And the purpose of that was so that 6 Mr. Voronchenko would have a better idea of how 7 this project would wind up looking? 8 A. That's correct. 9 Q. Okay. When did this particular 10 presentation occur, roughly? 11 A. It was the end of January or beginning 12 of February. End of January sometime. 13 Q. 2009? 14 A. 2009, yes. 15 Q. Yes. And was there a particular 16 reason why this presentation was requested or 17 needed? 18 A. Yes. Mr. Voronchenko needed to be 19 able to visualize the changes that were going to 20 occur in the apartment. 21 Q. Prior to that point in time, had there 22 been any friction or dispute with either Braverman 23 or Voronchenko about the direction that the 24 project was taking? 25 A. I wouldn't call it friction. I mean,	1 Deiss 2 contractors brought in to walk around and listen 3 to this presentation? 4 A. No. 5 Q. Did anybody keep minutes of that 6 meeting? 7 A. No. I may have some notes, but I'm 8 not sure. 9 Q. Well, I'll have some stuff that I'll 10 show you as we go on. At the time of this 11 presentation, what was Voronchenko's immediate 12 response, if any? 13 A. He liked it very much. 14 Q. What did he say, if you remember? 15 A. I don't remember what he said exactly. 16 Q. Did he -- but you say he liked it. 17 Did he express -- so he expressed some degree of 18 satisfaction with the -- 19 A. Yes, he did. 20 Q. Now, leading up to this Exhibit 3, 21 which has numerous computer-generated depictions, 22 some of them are copies, but were those prepared 23 in anticipation of this final book that we're 24 looking at, Exhibit 4? 25 A. Yes, it was. It was a work in

1 Deiss
2 progress.
3 Q. And how long did it take to put this
4 together, this Exhibit 4, from start to finish, do
5 you think?
6 A. I don't know exactly. Maybe a week.
7 Q. Were there numerous iterations of the
8 different computer-generated images we see here?
9 A. During the entire process of the work,
10 yes. Not just to put the book together.
11 Q. So the book was kind of the
12 culmination of --
13 A. Yes.
14 Q. -- a whole process that had started --
15 A. Of meetings with the client, changes,
16 everything.
17 MR. MANDEL: Please let him finish the
18 question.
19 Q. There had been any number of computer
20 generated images which preceded this, correct?
21 A. Correct.
22 Q. And they were refined over time?
23 A. Yes.
24 Q. Some of them were refined because the
25 images themselves maybe didn't meet what you had

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1 Deiss
2 drawings with computer-generated images,
3 marked for identification, as of this date.)
4 Q. Ms. Deiss, I'm going to hand you a,
5 now, larger collection of --
6 A. Drawings.
7 Q. -- drawings which were produced to me
8 and it also includes some of these
9 computer-generated images we were just looking at.
10 (Handing document to witness.)
11 Q. And I'll ask you some questions about
12 these. Certainly, flip through them to the extent
13 you need to to respond to any of my questions.
14 But do you recognize the materials contained in
15 this collection we've marked as Exhibit 5 as being
16 the work product of Triarch?
17 A. Yes, I do.
18 Q. And the first several pages have more
19 of these computer-generated images, correct?
20 A. That's correct.
21 Q. And then after you get a few pages, we
22 start to see some floor plans?
23 A. Yes.
24 Q. Now, you're at a page, I think you're
25 about four or five pages in, and it's an

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1 Deiss
2 requested from your subconsultant, yes?
3 A. Yes.
4 Q. And changes were made, were they not,
5 because the client wanted changes made, didn't
6 like a particular color or shade or something like
7 that?
8 A. Also because of that.
9 Q. Yes. When this presentation was made,
10 did you believe that it was necessary because
11 there was a chance that you were going to lose
12 this client?
13 A. No.
14 Q. Did you have any indication before
15 this meeting with Voronchenko that he was in any
16 way displeased or unhappy with the course this
17 project was taking?
18 A. No.
19 Q. Was there any indication from
20 Voronchenko prior to that presentation that he was
21 unhappy with the time it was taking to progress
22 the project?
23 A. Yes, he was unhappy with the time.
24 MR. MCKEE: Let's mark this.
25 EXH (Defendant Exhibit 5, compilation of

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1 Deiss
2 electrical layout, correct?
3 A. Correct.
4 Q. At sheet labeled or marked E?
5 A. E-1.
6 Q. Yes, E-1. And do we have a date on
7 here? December 23?
8 A. Yes.
9 Q. Okay. So that date on there, on this
10 particular sheet, what does that indicate? Is
11 that the date that this sheet was finalized,
12 December 23?
13 A. Um -- that date shows the date that it
14 was last worked on.
15 Q. Okay. Now, typically, if you create a
16 set of design development documents, okay, would
17 you, if changes were made thereafter, would you
18 make a notation in this index of changes area?
19 A. You would do that on construction
20 documents, not on design development.
21 Q. So when you're working with design
22 development, any new iteration or change that you
23 make will just come out and it will have a new
24 date down here lower in the title block?
25 A. Not in design development. If you

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1 Deiss
2 issue a construction -- when you issue
3 construction documents, which means that are
4 finalized, then every additional change will be
5 marked up here (indicating).

6 Q. I see.
7 A. In the index of changes.
8 Q. And that --
9 A. Before you issue construction
10 documents, you don't do that. You just -- it's a
11 work in progress.
12 Q. I see.
13 A. Before you officially issue them.
14 Q. So what we're looking at here, what is
15 this, is this design development?
16 A. No, it is a construction document in
17 progress. We still working on the redlining of
18 some of the areas. Position of some of the
19 recessed lights, switching.
20 Q. Do you recognize the handwriting on
21 there?
22 A. No. One of us. Me or Stephen.
23 Q. Mr. Corelli is a registered architect,
24 correct?
25 A. Yes, correct.

Deiss

1 A. This is not the project. Must have
2 gotten in there somehow.

3 Q. I see. When you do a project --
4 A. Yes.

5 Q. -- do you sometimes incorporate
6 elements that may have been used on other
7 projects --

8 A. No.

9 Q. -- since it's on a computer, you bring
10 it in, a typical detail or something?

11 Do you understand what I'm asking?

12 A. Typical details, maybe.

13 Q. For instance, we're looking at a sheet
14 which is designated as A-15. It has a date of
15 November 14.

16 A. Yes.

17 Q. Given that date, would this be design
18 development?

19 A. No, this is a construction document.

20 Q. It's a construction document. Okay.
21 It says, "Typical wall detail." Is that the type
22 of detail you would incorporate from another
23 project you might have prepared?

24 A. No. It says "typical" because it's

Deiss

Q. Are there other registered architects in your office, other than Mr. Corelli?

A. Not right now.

Q. How about in 2008 and 2009, were there any others?

A. Not registered architects.

Q. You had some graduate architects?

A. Yes.

Q. How about now, do you still have other graduate architects?

A. Yes.

Q. Other than Mr. Corelli and yourself, who worked specifically on any of the floor plans?

A. One architect in my office, Aaron Boucher.

Q. Mr. Boucher, is he still employed?

A. No, he's not.

Q. Do you know where he is, where he's currently employed?

A. No, I don't.

Q. This is a detailed fireplace, is that what that is?

A. Yes. But this is a different project.

Q. Oh, this is not --

1 Deiss
2 typical throughout the room.
3 Q. Yes. But if you have the type of
4 detail that's already been generated in connection
5 with another project, and it's going to be the
6 same one you employ here, do you incorporate that
7 into your plans? Or do you always generate
8 something new?
9 A. Mostly we generate new details. All
10 of our projects are different.
11 That's design development.
12 Q. As we get to the back of this
13 collection, we start to see some different --
14 here's a floor plan that's actually loose.
15 A. That is something that is not from us.
16 MR. MCKEE: Let's mark this as
17 Exhibit 6.
18 EXH (Defendant Exhibit 6, single-page
19 floor plan in color dated 10/14/08, marked
20 for identification, as of this date.)
21 Q. This is an eight-and-a-half-by-eleven
22 floor plan that --
23 MR. ISRAEL: Do you have a copy for
24 me?
25 MR. MCKEE: What?

1 Deiss
2 MR. ISRAEL: Do you have another copy
3 for me?
4 MR. MCKEE: No.
5 MR. ISRAEL: You don't have copies of
6 anything?
7 MR. MCKEE: You got a copy of one
8 exhibit, the contract.
9 MR. ISRAEL: That was very generous of
10 you. Can I see these documents before you
11 pass them to the witness so I can have an
12 idea what you're talking about?
13 MR. MCKEE: Yes, just a second. Let
14 me describe it.
15 We've marked as Exhibit 6 a
16 single-page floor plan in color, red walls,
17 with colors for different details which came
18 out of this larger collection.
19 (Document passed to counsel.)
20 A. Schematic design.
21 Q. Now, that sheet happened to fall out
22 of a portion of this larger Exhibit 5. It says,
23 "Private residence," it just says, "Floor plan."
24 It appears to be dated 10/14/08.
25 A. Yes.

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1 Deiss
2 there, correct?
3 A. I don't see it.
4 Q. When you said earlier that you'd
5 gotten two eight-and-a-half-by-eleven floor plans
6 which you said came from Garth Hayden, his name
7 was actually on it?
8 A. Yes.
9 Q. Was it a title block that said Garth
10 Hayden?
11 A. No, it was -- no. It was just
12 somewhere on the drawing. Garth Hayden
13 Architects.
14 Q. And if I recall correctly, you said it
15 shows existing conditions and --
16 A. Proposed.
17 Q. -- proposed reconfiguration of the
18 foyer. What do you recall it showing? Let me ask
19 that.
20 A. Existing conditions in one, and the
21 other one had some reconfigurations of the foyer,
22 maybe some other doors were moved. I don't
23 remember exactly.
24 Q. But it wasn't as detailed as that set
25 of DOB plans?

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1 Deiss
2 Q. All right. And you're looking at this
3 drawing and you're saying that's schematic design?
4 A. Yes.
5 Q. What constitutes -- it's also
6 designated as sheet 1. How do you know that's
7 schematic design as opposed to design development?
8 A. Because it's still dealing mostly with
9 the space planning issues in the apartment.
10 Q. Now, this separate document that fell
11 out, that we've marked as Exhibit 6, do you know
12 where that originated from?
13 A. No, I don't.
14 Q. Did you ever hear --
15 A. May --
16 Q. Yes.
17 A. -- it doesn't look like it's from our
18 office but I'm not sure.
19 Q. Now, it doesn't say Garth Hayden on
20 it, does it?
21 A. I can't read this.
22 Q. It's in yellow, which is difficult,
23 but it says "Park Avenue below," and the other
24 writing says, "60th Street below."
25 So Garth Hayden's name is not on

103

1 Deiss
2 A. Not at all. It had no measurements.
3 Q. And did it show that degree of detail
4 as to location of closets for the master bedroom
5 and movement --
6 A. It did.
7 Q. Oh, it did. Okay. So that
8 eight-and-a-half-by-eleven that you got from Garth
9 Hayden had the same type of details that were on
10 sheet A-2?
11 A. No. But it showed the position of
12 elements in the apartment.
13 Q. Now, I'll pull it back out if you need
14 me to. But would you agree with me that what
15 Garth Hayden showed on his DOB set of plans from
16 June of 2008 is different than what we see here?
17 A. Yes.
18 Q. Okay. And in fact, this diagram or
19 floor plan shows a kind of -- I don't know what it
20 shows, actually. It seems to highlight the area
21 between the elevator hallway and into the foyer.
22 A. Yes.
23 Q. But it doesn't show an opening into
24 the bedroom number three or anything like that.
25 A. No.

105

1 Deiss
2 file and approved by the DOB, you would have gone
3 and you would have measured yourself anyway?
4 A. Yes, that's what you do.
5 Q. That's only prudent.
6 A. Yes.
7 Q. Now, when this came into Triarch's
8 possession, what's been marked as Exhibit 5-A,
9 what, if anything, was Triarch told about Garth
10 Hayden's work to date?
11 A. We were told that since the plans that
12 had been filed and approved by the Department of
13 Buildings and approved by the management of the
14 building were done, we should not go too far away
15 from what he had done in order to not have to go
16 through the same process again.
17 Q. Behind that Garth Hayden drawing, we
18 see much more primitive sketches. This would be
19 schematic design?
20 A. Yes.
21 Q. And it just roughly shows some
22 furniture layout in the spaces, correct?
23 A. Um-hum, correct.
24 Q. Would you still consider this to be
25 schematic design or is that design development --

110 112
1 Deiss
2 A. Correct.
3 Q. And the drawings, the details are kind
4 of in blue, correct?
5 A. Correct.
6 Q. This is 4-B, more design development?
7 A. Correct.
8 Q. 5-B, this is the library, correct?
9 A. Correct.
10 Q. Towards the back, we again have an
11 occasional computer-generated image, correct?
12 A. Correct.
13 Q. Towards the very rear, we get into
14 some more -- these look like pictures, yes?
15 A. Yes.
16 Q. These are not computer-generated.
17 A. No, they are not.
18 Q. This is existing conditions.
19 A. Yes, it is.
20 Q. This would be the kitchen?
21 A. Yes.
22 Q. We're looking at? It has kind of a
23 cheetah animal motive? That was from the prior
24 owner, to your understanding?
25 A. No.

111 113
1 Deiss
2 A. Schematic design.
3 Q. And the document is entitled, "Floor
4 Plan, Sheet 1," and it's got a date of 10/14/08.
5 And it has no measurements, correct?
6 A. No. But it's to scale. Which means
7 you can measure on the drawing.
8 Q. And that is followed by a reflected
9 ceiling plan of the same date? Yes?
10 A. Yes.
11 Q. And your foyer plan is different than
12 what was shown on Exhibit 5-A --
13 A. Yes, it's --
14 Q. -- Garth Hayden's --
15 A. -- very different.
16 Q. It's also different than what we saw
17 on Exhibit 1.
18 A. Correct.
19 Q. 'Cause Hayden, his plan for the foyer
20 was to basically open it entirely up to the
21 elevator, correct?
22 A. Correct.
23 Q. We've now turned a page and we're on
24 sheet 3 of the same date, and that's still design
25 development, correct?

1 Deiss
2 Q. No?
3 A. No, it's --
4 Q. This is a different project?
5 A. No, it's the same project. It's what
6 is there right now.
7 Q. It's still there?
8 A. Well --
9 Q. As far as you know.
10 A. I don't know.
11 Q. Well, do you know when the
12 Voronchenkos bought this apartment?
13 A. No.
14 Q. To your understanding, had these
15 cabinets preexisting their purchase of the
16 apartment?
17 A. Yes.
18 Q. To your understanding, had the cheetah
19 motif preexisted their --
20 A. I don't know.
21 Q. -- purchase? You don't know?
22 A. I don't know.
23 Q. Okay. And the -- is that -- is that a
24 formica countertop or is that stone?
25 A. That is stone.

Deiss

Q. It is stone. Okay. Again, closer to the rear, we see a computer-generated image of the master bedroom, correct?

A. Correct.

Q. There's handwriting on there. Any idea whose it is?

A. It's my handwriting.

Q. Okay. And do you know why you had this handwriting on here? Why you added these comments?

A. Yes, I was making comments and corrections that had to be picked up by my people in the office to correct the images.

Q. Your people in the office, that's your subconsultants or --

A. No, my staff.

Q. Okay. Who was the lead on this for Triarch?

A. I was.

Q. Who had more day-to-day involvement on this project, you or Mr. Corelli?

A. I did.

Q. Here's another computer-generated depiction of the master bedroom; is that more of

1 Deiss
2 Q. We're looking at a depiction of the
3 dining room, I believe?
4 A. Yes.
5 Q. And a set of built-in tables?
6 A. It's also an Art Deco console table.
7 Q. And the handwriting on here in red, is
8 that yours?
9 A. No, that is Aaron Boucher.
0 MR. MANDEL: Let's go off the record
1 for a second.
2 (Discussion off the record.)
3 (Luncheon recess: 12:02 p.m.)
4
5
6
7
8
9
10
11
12
13
14
15

1 Deiss
2 your handwriting?
3 A. Yes, it is.
4 Q. For the same purpose?
5 A. Yes.
6 Q. Again, this is a different depiction
7 of the master bedroom?
8 A. Correct.
9 Q. Do you know whether this depiction
10 with this kind of pattern -- what would you call
11 that pattern?
12 A. Leaf.
13 Q. Leaf. Okay. This leaf pattern, was
14 that ever presented to Voronchenko?
15 A. Yes, it was.
16 Q. What did he think of it?
17 A. He didn't like it.
18 Q. Okay. Was he more in keeping with
19 this, the white?
20 A. Very much.
21 (Continued on following page.)
22
23
24
25

1 Deiss
 2 Medallion's counsel would go second.
 3 I've asked Mr. McKee to accommodate
 4 Mr. Israel's schedule and to permit
 5 Mr. Israel to begin his questioning now. He
 6 has indicated it would take two to three
 7 hours to get his questioning done. He could
 8 get some of it done up until 2:30 when he
 9 needs to leave for his 3 o'clock appearance.
 10 And then he would have an hour-and-a-half
 11 when he got back at 4 o'clock to complete
 12 his questioning and we could use that hour
 13 or so while he was gone for Mr. McKee to
 14 finish his questioning. But Mr. McKee has
 15 declined to do that.
 16 Mr. Israel has also indicated he would
 17 refuse to do that even if Mr. McKee had
 18 agreed to accommodate him. I understand
 19 that the scheduled appearance this afternoon
 20 that Mr. Israel has was scheduled only two
 21 days ago. As far as I know, he didn't ask
 22 the court to adjourn that or schedule that
 23 at some other time. Unfortunately, I am
 24 unable to continue after 5:30 today, which I
 25 told counsel early in the week, and that's

1 Deiss
 2 MR. McKEE: Can I go first?
 3 MR. ISRAEL: No, let me go --
 4 MR. McKEE: Yeah, but I'm lead on
 5 this, so --
 6 MR. ISRAEL: This is the thing that,
 7 what you just said is false. We didn't take
 8 a break this morning when I took my break.
 9 My associate stayed here. We didn't even
 10 take a break. So that's false.
 11 Judge Kaplan ordered me to be in court
 12 this afternoon. I invited you to call Judge
 13 Kaplan and tell him that you disagree with
 14 his order and that I should continue with
 15 the deposition, but you declined to do that.
 16 In fact, you still have two hours if you'd
 17 like to call the judge now and tell him that
 18 it's more important that I stay in this
 19 deposition because your client has to leave
 20 at five today and you refused to product
 21 your witness on another day, even though
 22 you're the plaintiff in a frivolous lawsuit.
 23 You're welcome to give him a call, but
 24 we're going to continue the deposition, and
 25 we'll do it as long as -- however is

1 Deiss
 2 exactly why I proposed we start at nine a.m.
 3 and we were here a few minutes before nine
 4 to make sure we started promptly.
 5 Mr. Israel, I'm sure, will have some
 6 things to say but he has asked for us to
 7 continue on another day. And I have
 8 indicated that that simply isn't a
 9 reasonable request, to leave the witness
 10 sitting here for an hour waiting for him to
 11 return only so that he can then continue his
 12 deposition on another day.
 13 It may be Mr. Israel is really
 14 motivated by the fact this morning I learned
 15 that he had not bothered to obtain the
 16 documents in this case. Those documents
 17 were made available to all the defendants
 18 months ago. Garth Hayden's counsel took the
 19 documents, copied the documents, and
 20 retained a copy for himself. It appears
 21 that Mr. Voronchenko's counsel and
 22 Medallion's counsel didn't have the
 23 documents that were produced by my client,
 24 and that's been the subject of some
 25 discussion on the record today as well.

1 Deiss
 2 necessary, so that I get the full time
 3 that's allotted to my client under the
 4 Federal Rules of Civil Procedure.
 5 Now you can go, Wes.
 6 MR. McKEE: Thank you. Well, just so
 7 we're clear, as far as the order of priority
 8 of depositions or who's taking the
 9 deposition, I'll just remind counsel that I
 10 was the only attorney to issue deposition
 11 notices and the only attorney to really
 12 pursue discovery within the original time
 13 frame established by the court.
 14 So the fact that I'm taking the lead
 15 on this deposition should come as no
 16 surprise, notwithstanding the fact that my
 17 client is the third named defendant.
 18 Secondly, my client is a design
 19 professional. He's been sued for copyright
 20 infringement. This is not something that is
 21 normal in the course of even somebody who's
 22 a busy design professional, who might get
 23 dragged into a claim of negligence or breach
 24 of contract. We're basically being accused
 25 of stealing somebody else's work product.

1 Deiss
 2 identification, as of this date.)
 3 MR. MCKEE: And we will call these
 4 December 23, 2008 preliminary issue set.
 5 EXAMINATION (Cont'd.)
 6 BY MR. MCKEE:
 7 Q. Now, before we get into this, when you
 8 were first retained, did you receive any drawings,
 9 plans, schematics, anything from Jendretzki
 10 Architecture and Planning Consultants?
 11 A. No, not to my recollection.
 12 Q. Are you familiar with an individual by
 13 the name of Pablo Jendretzki?
 14 A. No.
 15 Q. Were you presented with a set of
 16 plans, schematics, design development drawings or
 17 construction drawings related to any of the other
 18 apartments located in this building?
 19 A. No.
 20 Q. Were you told by any of your clients,
 21 either Braverman or Mr. Voronchenko directly, that
 22 they had originally consulted with an architect by
 23 the name of Jendretzki, about doing this project?
 24 A. No. I was told that they had
 25 consulted with -- hired a number of different

1 Deiss
 2 A. Yeah.
 3 Q. All right? Because at this point I'm
 4 not asking you to guess, particularly since you're
 5 alleging that Mr. Hayden copied your work.
 6 A. Um-hum.
 7 Q. Did you ever have any direct
 8 communications with Garth Hayden, you personally?
 9 A. Direct, no.
 10 Q. To your knowledge, did Triarch,
 11 anybody from Triarch, have any direct
 12 communications with Garth Hayden?
 13 A. I don't know.
 14 Q. Okay. You're unaware of any? You
 15 don't know of any, do you?
 16 A. I don't know. I don't remember. I
 17 don't know and I don't remember.
 18 MR. MANDEL: Sitting here today, are
 19 you aware of any communications that anyone
 20 at Triarch had with anyone at Garth Hayden?
 21 THE WITNESS: No, I'm not aware of it.
 22 Q. Okay, thank you. During your
 23 involvement in the project, did you ever hear of
 24 an individual by the name of Pepe Calderan?
 25 A. Yes.

1 Deiss
 2 architects for the same project. But I don't
 3 remember the names.
 4 Q. Okay. So you don't remember any of
 5 the names of any of the architects who may have
 6 been hired before you.
 7 A. No.
 8 Q. Correct? How about any designers?
 9 Were you ever told by either Braverman or
 10 Mr. Voronchenko directly that they had retained or
 11 were working with some designers?
 12 A. Yes.
 13 Q. And in fact, you had some
 14 correspondence with various designers, correct,
 15 during the course of the project?
 16 A. We had correspondence with Garth
 17 Hayden, maybe. But I don't remember having
 18 conference with other designers.
 19 Q. Do you recall having correspondence
 20 with Garth Hayden?
 21 A. No, I'm not. I said we might have.
 22 But --
 23 Q. Okay --
 24 A. That's the only name that I remember.
 25 Q. Let me be clear with my question.

1 Deiss
 2 Q. You've heard of Pepe Calderan.
 3 A. Pepe.
 4 Q. You've heard of Pepe?
 5 A. Yes.
 6 Q. Did you receive any materials from
 7 Pepe Calderan?
 8 A. No.
 9 Q. In what context did you hear of Pepe
 10 Calderan?
 11 A. In the beginning, at one of our
 12 initial meetings, his name was mentioned by
 13 Mr. Voronchenko or Garry.
 14 Q. What did they say about him?
 15 A. Said that it was someone that had
 16 worked on the project.
 17 Q. What did they say that he had done?
 18 A. Didn't specifically say anything else.
 19 Q. How about somebody by the name of
 20 Philip? Do you recall corresponding at all with
 21 anybody by the name of Philip?
 22 A. Yes.
 23 Q. And did you know Philip's last name to
 24 be Vuckovic?
 25 A. No.

1 Deiss
2 A. And at the same time, be able to build
3 the project, yes.
4 Q. Okay. Did you take a permit out? Was
5 a permit pulled on this?
6 A. We -- a permit is being pulled by the
7 contractor.
8 Q. Yes. Was a contractor retained by
9 this point in time?
10 A. No. What happened is, we had a
11 meeting with Mr. Voronchenko, gave him all the
12 documents, gave him the book, gave him boxes with
13 materials, and then he disappeared.
14 Q. Okay. And that meeting occurred in
15 February?
16 A. I don't remember the exact date of the
17 meeting.
18 Q. I didn't say date. But the month. I
19 think earlier you showed me, we were looking at
20 that one brochure and you said that was related to
21 a February 2009 meeting. Is that what we're
22 talking about?
23 A. End of January or beginning of
24 February. I don't remember exactly the date. We
25 can certainly look it up somewhere.

1 Deiss
2 A. Could be anything. It could be the
3 lamp on the night table.
4 Q. These plans that we're looking at
5 here, do they specify such things as lamps on
6 tables and bedding or anything like that?
7 A. No, they don't.
8 Q. All right. Were you going to prepare
9 a separate book or presentation regarding
10 suggested --
11 A. No.
12 Q. -- furniture and fixture --
13 A. No, we were not asked to do that.
14 Q. Okay. So if he was possibly not
15 settled on a lamp or a table for the bedroom, how
16 would that impact the drawings themselves?
17 A. It wouldn't impact the drawings. It
18 was his personal way of dealing with a project.
19 He would not approve it if he didn't like the
20 bedspread or the curtain or something that was
21 irrelevant to the project.
22 Q. But as far as you're concerned, this
23 set of drawings, these would be considered the
24 construction set of drawings?
25 A. Yes.

1 Deiss
2 Q. We may come across it. So you had
3 that meeting in late January or early February
4 2009. And it was at that meeting that you
5 presented all those renderings, correct?
6 A. Yes.
7 Q. And to do the renderings, you needed
8 the plans, correct?
9 A. Yes.
10 Q. Okay. So at this time that you were
11 terminated, or the contractual relationship was
12 ended, the design was still subject to change? In
13 other words, Voronchenko had not given his final
14 approval?
15 A. Um -- parts of it. Or part of it.
16 Q. Part of it.
17 A. Not his final approval.
18 Q. What parts did and what parts did not
19 have his final approval?
20 A. From what I remember, maybe the master
21 bedroom did not have his final approval because he
22 hadn't seen the final images yet.
23 Q. And what was it about the master
24 bedroom that would not have received his final
25 approval?

1 Deiss
2 Q. And that would include sheet D-1 which
3 shows the proposed demolition plan?
4 A. Yes.
5 Q. So when you had completed what you
6 considered your construction set of drawings, the
7 demolition plan called for this opening of the --
8 what I'll call the elevator hallway, you were
9 going to make a larger opening?
10 A. Yes, correct.
11 Q. And you were going to change the doors
12 into the dining room?
13 A. Yes.
14 Q. But they were going to remain in the
15 same location, correct?
16 A. Correct.
17 Q. And you were going to change the doors
18 into the bedroom hallway and into this --
19 A. Correct.
20 Q. -- what had been the third bedroom?
21 A. Yes.
22 Q. And you were going to open up the wall
23 that separated the third bedroom and the living
24 room?
25 A. Correct.

1 Deiss
2 Q. Okay. Well, since we're looking at
3 the plan right here, to the extent you can tell,
4 does it appear that the four corners of that space
5 are moving at all, based upon the demolition plan?
6 A. No, but I can't tell you for sure.
7 Q. But by glancing at it right now, it
8 doesn't appear that's changing, does it?
9 A. It does not.
10 Q. Now, one of the changes we see in this
11 area of the foyer is that the hallway, the bedroom
12 hallway and the entrance into bedroom number 3,
13 the doors remain, but you're changing the doors,
14 correct? There's a change in the type of doors?
15 A. Yes.
16 Q. It's part of your scope of work,
17 changing the type of doors?
18 A. That's correct.
19 Q. And they have also changed the door
20 into the closet for bedroom number 3, correct?
21 That stays, yes?
22 A. Yes.
23 Q. And we still have, as you go down the
24 bedroom hallway, there's still a closet in that
25 hallway. What changed there is a door, different

1 Deiss
2 bedroom, the doorway that used to be at the end of
3 the bedroom hallway is removed, correct?
4 A. Correct.
5 Q. So now it continues all the way back
6 to a new door for the master bedroom.
7 A. Yes.
8 Q. And the door to bedroom number two
9 remains the same, correct?
10 A. Correct.
11 Q. In fact, were there any changes
12 proposed for bedroom number two?
13 A. No.
14 Q. Now, looking at the demo plan, which
15 also shows existing conditions, correct?
16 A. Yes.
17 Q. And looking at the master bedroom, one
18 of the most notable changes would appear to be
19 that, in your plan, you create a full line of
20 closets heading down into the master bedroom;
21 correct?
22 A. Correct.
23 Q. And you also reconfigure some of these
24 closets on either side of the bathroom entryway,
25 correct?

1 Deiss
2 door, correct?
3 A. Correct.
4 Q. And we also see there was a change in
5 the elevator hallway. You changed the door that
6 went from the elevator hallway out into this
7 kitchen hallway.
8 A. Yes.
9 Q. Which services the kitchen and the
10 service elevator, yes?
11 A. Yes.
12 Q. And your plan called, I guess -- does
13 your plan call for a change to the kitchen door?
14 Because it's not on the demo plan. But do you
15 know whether that's a change?
16 A. Might not -- no, it's not a change.
17 Q. And the other end of the elevator
18 hallway, there's still the same door there,
19 correct?
20 A. Correct.
21 Q. In fact, your plan calls more or less
22 for maintaining a hallway by the elevator,
23 correct? You step out into a small hallway?
24 A. Correct.
25 Q. Now, going down the hall towards the

1 Deiss
2 by having this whole wall of closets, correct?
3 A. Correct.
4 Q. Now, the demolition plan calls for
5 keeping the original shower?
6 A. Yes, it does.
7 Q. But a new tub and new sinks, correct?
8 A. Correct.
9 Q. Your plan called for keeping the same
10 floor in the dining and living room, called for
11 refinishing existing floor?
12 A. Yes. But it has still -- there's
13 still some changes. I think we were going to
14 create a new border around the floor.
15 Q. Some kind of an inlay around the edge?
16 A. Yes.
17 Q. Now, you're aware that, in this
18 lawsuit, that an allegation has been made that the
19 defendants, and more particularly, Garth Hayden
20 violated federal copyright law. Are you aware of
21 that?
22 A. Yes.
23 Q. Now, originally, Triarch brought a
24 breach of contract claim against Medallion and
25 Vladimir Voronchenko, correct?

Deiss
1 the plans from the building department?
2 A. Expediter.
3 Q. Somebody you used for regular jobs in
4 the past?
5 A. Yes.
6 Q. Called him up and said, "I want you to
7 go pull the construction set of documents for this
8 project," correct?
9 A. Correct.
10 Q. Okay. Who made that request, you or
11 somebody else in your office?
12 A. Either me or Stephen Corelli.
13 Q. So you don't remember if you made that
14 request?
15 A. I made the request to the building
16 department expediter.
17 Q. So you made that personal request.
18 How did you, Triarch, find out that the project
19 was being built, as you put it, based upon your
20 plans?
21 A. I -- I paid a visit to the Tempora
22 Mobili people in Italy, which is close to my home,
23 and because I was curious. I had been in touch
24 with them. They had been requesting over and over
25

1 Deiss
2 to see our drawings and to receive our drawings,
3 and we had started sending them some drawings.
4 And I talked to them and they actually showed me
5 what was in the process of being built.

6 Q. Tempora Mobili?
7 A. Um-hum.
8 Q. You were dealing with --
9 A. Alberto.
10 Q. Signor Alberto?
11 A. Yes.
12 Q. What is your first language?
13 A. German.
14 Q. But you also speak Italian.
15 A. I went to school there, yes.
16 Q. And when you corresponded with the
17 folks, Alberto at Tempora Mobile, you corresponded
18 in Italian, correct?
19 A. Probably yes. Never know if they
20 speak English.
21 Q. Okay. And when was that, that you
22 went there and you found out that -- well, let me
23 back up.
24 So you found out from Alberto or
25 Tempora Mobili that they were preparing stone for

1 Deiss
 2 what you believed was based upon your plans?
 3 A. I don't remember the date. It was
 4 probably in the same year, 2009. They showed me
 5 the vault of the library that they were in the
 6 process of building. They showed me drawings that
 7 we have a copy of that are fabrication drawings
 8 for the library panels and doors.
 9 Q. So they had drawings that they were
 10 operating off, fabrication drawings. And you have
 11 copies of those?
 12 A. Yes. I have received copies of those
 13 a while ago through our first attorney, I think.
 14 Q. Okay.
 15 RQ MR. MCKEE: I don't believe that I've
 16 ever received those. So as we get a
 17 description of what they are on the record,
 18 I'm going to say right now that I am making
 19 a request that they be provided, preferably
 20 by Monday because I think we're supposed to
 21 reconvene with Mr. Corelli. Just to avoid
 22 any problems.
 23 Q. So these drawings that you saw when
 24 your contact over at the marble company was made,
 25 what's the date of those drawings?

1 Deiss
 2 Q. So were you shown a copy of the either
 3 architectural or interior design drawings upon
 4 which Mobili was basing their shop drawings?
 5 A. I was shown, yes.
 6 Q. And whose drawings were they?
 7 A. I don't know who within the company
 8 had prepared the drawings.
 9 Q. I'm not talking about the shop
 10 drawings. But the shop drawings were based upon
 11 somebody else's --
 12 A. No, they didn't show me those
 13 drawings. Whatever drawings they used to prepare
 14 their drawings, they didn't show me. But they
 15 told me that they had our drawings.
 16 Q. That they had your drawings?
 17 A. Yes, but they didn't show them to me.
 18 Q. Is it your understanding that Mobili
 19 was fabricating stone --
 20 A. Cabinetry.
 21 Q. -- sorry, cabinetry. Okay. So they
 22 are not stone.
 23 A. They also do stone. They do
 24 everything.
 25 Q. I see. Cabinetry for the library.

1 Deiss
 2 A. I don't know.
 3 Q. Would you --
 4 A. I can look it up. I don't remember
 5 what the date is on the drawings.
 6 Q. Do you happen to have them here with
 7 you?
 8 A. No, I didn't bring anything.
 9 Q. Okay.
 10 A. Sorry. Are you sure you don't have
 11 them, because -- okay. You would know.
 12 Q. I don't think that I have them. But I
 13 will -- I will look again before Monday. I'm not
 14 going to look now. I just don't remember seeing
 15 them.
 16 Who prepared those drawings? Whose
 17 name or names were on them?
 18 A. Tempora Mobili, maybe Alberto
 19 himself --
 20 Q. So they were shop drawings?
 21 A. They were shop drawings.
 22 Q. So the shop drawings are based upon
 23 somebody's, usually somebody's architectural or
 24 interior design drawings; correct?
 25 A. Exactly, correct.

1 Deiss
 2 A. Yes.
 3 Q. Okay. That's that wall of
 4 bookshelves.
 5 A. Correct. It's the entire room,
 6 actually.
 7 Q. Including the paneling and the
 8 vaulted ceiling.
 9 A. Correct.
 10 Q. So all that cabinetry, all that
 11 woodwork, was being done by Mobili over in Italy,
 12 yes?
 13 A. Correct.
 14 Q. And you saw their shop drawings?
 15 A. I did.
 16 Q. And you have copies of their shop
 17 drawings?
 18 A. I have now copies of the shop
 19 drawings.
 20 Q. You now have but you do not know what
 21 design drawings they were based on.
 22 A. I do not know.
 23 Q. Okay. Were you told whose design
 24 drawings they were based on?
 25 A. Yes.

1 Deiss
2 Q. And what were you told?
3 A. They said they based them on our
4 drawings.
5 Q. The drawings actually say "Triarch"?
6 A. Yes.
7 Q. But again, they didn't show you which
8 particular sheet or anything like that?
9 A. No, I did not see anything.
10 Q. All right. Now, this set of drawings
11 which we've marked as Exhibit 7 has 18
12 architectural pages. Can you go to the page --
13 A. 19.
14 Q. -- nineteen, I beg your pardon -- can
15 you go to the page where you think Mobili may have
16 gotten the design information it needed to do its
17 shop drawings?
18 All right, A-11. So we're looking at
19 sheet A-11. And this is called, "Library
20 elevations." Okay.
21 So you were told that they have your
22 drawings and that they were basing their work on
23 what we see on this page.
24 A. Correct.
25 Q. And we see here -- were they making

1 Deiss
2 A. Yes.
3 Q. Okay. This set of drawings which
4 we've marked as Exhibit 7, is this the set of
5 drawings that you claim copyright protection to?
6 A. I think so. I would have -- I would
7 have to verify that hundred one percent. I think
8 so.
9 Q. How would you verify it?
10 THE WITNESS: Do you have the set?
11 MR. MANDEL: I think that -- I can't
12 answer questions today. But --
13 THE WITNESS: Okay.
14 MR. MANDEL: -- but if your answer is
15 you had asked your lawyer, it sounds like
16 that might be your answer, then that's how
17 you would verify it.
18 THE WITNESS: So?
19 MR. MANDEL: I'm not going to answer
20 any questions on the record. They are --
21 THE WITNESS: Okay.
22 A. I would have to verify it.
23 Q. But as you sit here today, you believe
24 that this is the set of drawings which was filed,
25 deposited with the Copyright Office?

1 Deiss
2 the doors?
3 A. Yes.
4 Q. All right. And this is, again, this
5 is a paneled door and it has leather panels --
6 A. Metal --
7 Q. -- and with metal trim around it?
8 A. Correct.
9 Q. And metal studs?
10 A. Um-hum, yes, and a wood frame.
11 Q. Yes. And on the bottom we see the
12 bookcases, correct?
13 A. Correct.
14 Q. And again, the bottom of the bookcases
15 have doors on them and those are covered with
16 leather panels with metal trim and studs?
17 A. Correct. Of this part of the library,
18 we have many different versions.
19 Q. Yes.
20 A. This is the one that appears in this
21 document. There are many others.
22 Q. All right. But this is the set -- let
23 me ask you this:
24 Were you involved in the application
25 and submission to get a copyright on the drawing

1 Deiss
2 A. I believe so. I'm not a hundred
3 percent sure, but I believe so.
4 Q. Okay. How often have you -- "you"
5 meaning Triarch -- copyrighted their design
6 documents, gone through the effort of actually
7 submitting them, depositing them with the
8 Copyright Office?
9 A. Maybe twice.
10 Q. That includes this time?
11 A. Yes.
12 Q. So maybe one other time?
13 A. Yes.
14 Q. Now, you submitted for the copyright
15 in 2011, if I'm not mistaken, correct?
16 A. I don't remember the date.
17 Q. But it was after the lawsuit against
18 Medallion and Voronchenko for breach of contract
19 was started, yes?
20 A. Yes.
21 Q. And it was after you had gone to Italy
22 and spoken with Mobili, yes?
23 A. Yes.
24 Q. Okay. And you did it because you
25 thought at that time that your drawings were being

Deiss

2 A. No.
3 Q. Okay.
4 A. He's also removing the entire portion
5 of this wall here (indicating) which we're not
6 showing in our demo plan.
7 Q. That's the wall between these two hall
8 closets for the master bedroom.
9 A. Correct.
10 Q. You just show the removal of the
11 doors.
12 A. Yes.
13 Q. Those are the two closets on the north
14 wall.
15 A. North side, yes. Yeah, I think that's
16 pretty much it.
17 Q. What I'd like to do is go to sheet
18 A-1. And sheet A-1 of your drawings, Exhibit 7,
19 and sheet A-2 of Hayden's plans, Exhibit 1, now,
20 these are both the overall floor plan, correct?
21 A. Yes, correct.
22 Q. And looking at these two floor plans,
23 can you --
24 A. You know, it's easier if we turn them
25 around, if you don't mind, because then they face

1 Deiss
2 A. Well, his south wall now is moved up
3 to here (indicating). His entire foyer is this.
4 Q. He's enlarged the foyer.
5 A. Yes.
6 Q. He's removed more or less the elevator
7 hallway.
8 A. Exactly.
9 Q. And he's removed part of the bedroom
10 hallway?
11 A. Yes. And he's removed the shower part
12 of the bathroom.
13 Q. Yes.
14 A. And shortened this part out of -- out
15 of the library area.
16 Q. He, in Hayden's plan, he has a solid
17 wall between the library and the foyer?
18 A. Correct.
19 Q. And off to the side of that, he turned
20 part of what used to be the hallway into bedroom
21 number 3, into a hall closet, a coat closet out in
22 the foyer.
23 A. Yes.
24 Q. Okay. How about the new opening
25 between the bedroom, library and living room? How

1 Deiss
 2 ours.
 3 Q. So he has two closets facing out into
 4 the hallway, and one facing out into the bathroom
 5 hallway, correct?
 6 A. Yes.
 7 Q. And in your plans, you have two
 8 closets facing out into the hallway, and the other
 9 one --
 10 A. Yes, but --
 11 Q. -- you've moved the entry into the
 12 bathroom forward. Correct?
 13 A. Yes. We have. We have increased the
 14 size of the bathroom. And -- I don't know how
 15 much we moved these back. The configuration of
 16 this entire area is different.
 17 Q. So he has three closets and you have
 18 three closets but the relationship of them is
 19 different.
 20 A. Yeah.
 21 Q. Okay. How about on the --
 22 A. The same with the door here. We don't
 23 have the door in the same position that he has it,
 24 this door, this door.
 25 Q. You're talking about the door as you

1 Deiss
 2 floor, correct?
 3 A. Yes.
 4 Q. Can you find the detail for these
 5 windows that we were looking at here, the living
 6 room, on your plan? And we're looking at sheet
 7 A-8.
 8 A. Yes, we are.
 9 Q. And this is for the living room?
 10 A. Yes, it is.
 11 Q. This shows all four walls?
 12 A. Yes, it does.
 13 Q. Okay. Now, Hayden's plan doesn't show
 14 all walls for all rooms, does he?
 15 A. No.
 16 Q. On the top of his plan, he shows the,
 17 I guess it would be the --
 18 A. That's this, it's the same on this one
 19 here (indicating).
 20 Q. Same at the bottom, which is the west
 21 elevation?
 22 A. Yes.
 23 Q. Okay. And how do the two differ?
 24 A. We have wood paneling above the
 25 windows, fluted wood paneling. We have a stone

1 Deiss
 2 come down the bedroom hallway --
 3 A. Yes.
 4 Q. -- directly in front --
 5 A. We have a door at this point.
 6 Q. Yes.
 7 A. He has a door at this point. It's in
 8 a totally different location.
 9 Q. His door runs north-south, yours runs
 10 east-west.
 11 A. Yes.
 12 Q. Okay. And again, as you come down the
 13 right side into the master bedroom, he lines the
 14 wall with closets, correct?
 15 A. Correct.
 16 Q. Would you say that they are
 17 substantially similar?
 18 A. They are similar.
 19 Q. Okay. See any other differences in
 20 bedroom number 2 or bedroom number 4?
 21 A. No. No changes. No -- no work is
 22 being done there.
 23 Q. Okay. Page A-3 of Hayden's plan, we
 24 looked at this earlier. This shows some
 25 elevations as well as a detail for the foyer

1 Deiss
 2 base. We have leather panels with nails, straight
 3 panels, actually, and we have wood -- the same
 4 fluted wood paneling on the top.
 5 We have alabaster glass framed by
 6 metal in the back. We have a soffit.
 7 Q. Yes.
 8 A. That's how they differ.
 9 Q. Okay. And then, looking at here, I'm
 10 upside-down, so I apologize, the middle elevation
 11 on Hayden's plan.
 12 A. This is the middle -- no, wait, this
 13 is the middle elevation. This is ours and this is
 14 Hayden's.
 15 Q. Called the south elevation?
 16 A. Yes.
 17 Q. And again, that's street side with the
 18 two windows?
 19 A. The windows are here. That's the door
 20 to the library.
 21 Q. I see. And on Hayden's elevation
 22 here, he shows a solid core wood sliding pocket
 23 door?
 24 A. Yes, we have a leather and metal
 25 paneled wood framed pocket door.

1 Deiss
 2 using your plans to fabricate anything for the
 3 apartment?
 4 A. Because they had insisted very much on
 5 getting our drawings throughout the entire
 6 process. And because I knew from Mr. Voronchenko
 7 and Garry and -- that they were using them to
 8 build the apartment.
 9 Q. But how did you know?
 10 A. I didn't know for sure. I went to
 11 see.
 12 Q. See, that's what I'm -- I'm just
 13 trying to clarify it. You suspected that they
 14 were using your drawings?
 15 A. Yes.
 16 Q. Okay. So nobody had initially told
 17 that you they were using your drawings. You
 18 suspected it.
 19 A. I suspected it.
 20 Q. Okay. When you went to Mobili, was it
 21 based upon a suspicion that they were using your
 22 drawings?
 23 A. Yes, it was.
 24 Q. Okay. Why did you go to Mobili? Out
 25 of any other place, why would you go to Mobili?

1 Deiss
 2 Q. Okay. And you went back to Mobili?
 3 A. Yes, I did.
 4 Q. And you went back there on the
 5 suspicion that they were still manufacturing or
 6 fabricating for this project?
 7 A. Yes.
 8 Q. Okay. And what led you to suspect
 9 that they were still fabricating based upon your
 10 plans?
 11 A. The same reason that we had before,
 12 that I had before to go and see them. I wanted to
 13 have more proof.
 14 Q. Okay. Had you heard from somebody
 15 that the project was progressing based upon plans
 16 prepared by Triarch?
 17 A. No.
 18 Q. So you hadn't spoken to anybody who
 19 might have a connection with either
 20 Mr. Voronchenko or Medallion?
 21 A. No.
 22 Q. It was just a suspicion.
 23 A. Yes.
 24 Q. Okay. Now, so was it between the
 25 first visit and the second visit that you had your

1 Deiss
 2 A. Because I had a contact with them. We
 3 had probably sent them drawings. They -- I was
 4 pretty sure that Mr. Voronchenko was using them to
 5 fabricate the apartment because that's what he was
 6 always expressing he would do. And because it was
 7 in the neighborhood.
 8 Q. So you went there on a hunch, more or
 9 less?
 10 A. What is a hunch?
 11 Q. A suspicion.
 12 A. Yes.
 13 Q. And then they showed you shop drawings
 14 at that time.
 15 A. Yes, they did.
 16 Q. And they told you it was based upon
 17 drawings that had the name Triarch on them.
 18 A. Yes.
 19 Q. But they never gave you a copy of
 20 those.
 21 A. No.
 22 Q. And then six months later, you were
 23 back in the area.
 24 A. About six months. I don't know
 25 exactly how much later.

1 Deiss
 2 expeditor go get a copy of these plans?
 3 A. I'm not sure. It can have happened
 4 after the second visit. I would have to check the
 5 dates.
 6 Q. How long after you received these
 7 plans, which we've marked as Exhibit 8, was it
 8 before the federal complaint was filed?
 9 A. I don't know.
 10 Q. Can you estimate for me? Was it more
 11 than or less than six months?
 12 A. I don't know. I can't even estimate.
 13 Q. That's fine. Okay. So when you got
 14 these plans, what did you do?
 15 A. I compared them to our plans.
 16 Q. Okay. Now, we're going to compare
 17 sheet E-1 of Exhibit 8 to sheet D-1, Exhibit 7,
 18 which is your demolition plan. What I'd like you
 19 to do is show me any and all instances where you
 20 feel that this sheet on Exhibit 8 is somehow
 21 infringing upon your copyrighted drawing, D-1.
 22 A. I can tell you right away there's not
 23 much on this plan. It's in the elevations. But
 24 this is basically the same plan we looked at
 25 before.

1 Deiss
2 Q. The demolition plan?
3 A. Yes. This has not been -- this has
4 not changed.
5 Q. So as you --
6 A. Actually, no. What am I -- yeah.
7 This has changed over here (indicating). Let me
8 see -- no, I -- no, it's the same. Yeah, this is
9 basically the same plan that he filed before.
10 Q. Okay. Now, one thing before we move
11 off this sheet. His demo plan, "His" being Garth
12 Hayden, the living room, it says, "Remove
13 fireplace box, mantle, hearth," etc. You don't
14 make any reference on your plan.
15 A. Okay.
16 Q. Okay. But was that the intent --
17 A. Yes, it was -- no, what -- can you --
18 Q. I'll repeat the question. All right.
19 When you were working for Medallion and
20 Mr. Voronchenko, was it the intent to, in effect,
21 remove the preexisting fireplace?
22 A. Yes, it was.
23 Q. We're now going to go to sheet A-1 of
24 your drawings and I'm going to lay out sheet A-2
25 from Exhibit 8. And I will turn it this time.

1 Deiss
2 Now, looking at -- well, first of all,
3 would you agree with me that this is basically an
4 overall floor plan for the apartment?
5 A. Yes, it is.
6 Q. Okay. Now, if you could, would you
7 look at this sheet A-2.
8 A. Um-hum.
9 Q. Do you feel that there are
10 infringements of your work which are up here on
11 this particular page?
12 A. Yes, I do.
13 Q. Okay. I need you to identify each and
14 every one of them.
15 A. Okay. Let's start with the bottom
16 part here.
17 Q. When you say "bottom," you're talking
18 about towards the --
19 A. Toward the bedroom area, master
20 bedroom area.
21 Q. Okay.
22 A. The position of the door has been
23 changed from his drawings to be in the same
24 position that we have.
25 Q. So the entry into the master bedroom.

1 Deiss
2 respond to your question I would have to have an
3 architecture scale and measure. It looks to be
4 the same.

5 The division of the closets and the --
6 the change in material on both sides is the same
7 as we have in our drawings.

8 Q. What material, what does it say?

9 A. Over here. If you look at his other
10 drawing, we actually have something happening here
11 in the wall.

12 Q. When you say "something happening"
13 there --

14 A. A wall built.

15 Q. So there's a framed opening from the
16 hallway into the master bedroom?

17 A. No, it's within the closet area over
18 here. If we look at his previous drawing, he
19 doesn't have that.

20 Q. Doesn't have a --

21 A. No, that's not in the same location,
22 and it's just a closet wall. This is a partition.
23 This is a partition.

24 Q. It's a heavier divider? Well, what
25 does this mean here, these narrower lines --

1 Deiss
2 A. Nothing --
3 Q. -- let me complete the question. The
4 original drawings, sheet A-2 in this wall of
5 closets here for the master bedroom, there's a --
6 looks like a narrower line than what's shown on
7 his amended plan between the two longer closets.
8 That's the distinction? Yes?
9 A. It's a difference of division of the
10 doors themselves, and of the closet space itself.
11 Q. Okay.
12 A. At the same time, he -- we have our
13 closets all along one wall.
14 Q. Yes.
15 A. And keep these separate. He changed
16 it to our configuration and kept this separate
17 again.
18 Q. So he changed the deeper closets to
19 more -- to more reflect what we see for more,
20 similar to what we see in yours, correct?
21 A. Correct.
22 Q. Okay.
23 A. For the same -- actually, not more.
24 It's the same.
25 Q. Okay. What else?

1 Deiss
2 Q. Single. Thank you. And then we have
3 a soffit, I think you said, in the dining room?
4 A. Yes.
5 Q. And can you tell by this depiction on
6 these two sheets if there's, what, if any,
7 difference there is between the soffits?
8 A. Between our soffit and his soffit?
9 Q. Yes.
10 A. Hard to tell.
11 Q. Okay. Anything else?
12 A. I think that's pretty much it for the
13 floor plan.
14 Q. Okay. Sheet A-3 of Hayden's amended
15 plan, it has a reflected ceiling plan and soffit
16 detail.
17 So if you could go to whatever portion
18 of your drawings reflect the reflected ceiling
19 plan, we're on sheet A-2?
20 A. Yes.
21 Q. Okay. I'll put that in the proper
22 position. Now, other than the fact that Hayden's
23 plans now show soffits and, as you noted, the
24 living room shows a double soffit, can you tell me
25 what are the similarities between your reflected

1 Deiss
2 ceiling plan and my client's?
3 Now, you just pointed to the foyer.
4 A. There is a round --
5 Q. Circular?
6 A. -- sorry, circular recessed ceiling in
7 the foyer.
8 Q. Okay. Now, is your detail egg-shaped
9 or oval?
10 A. No, it's round.
11 Q. Is it round? Okay. And now, in
12 comparing these to what you've called similar
13 conditions, would you agree with me that the
14 depiction on Hayden's plan shows a couple of
15 different levels?
16 A. In the soffits?
17 Q. For the foyer. That circular detail.
18 A. It has two different levels, yes.
19 Q. What's your understanding, if any, of
20 what that detail in the center of his ceiling
21 detail is for that?
22 A. I have no idea.
23 Q. Okay. So what other similarities, if
24 any, do you see between these two reflected
25 ceiling plans?

1 Deiss
2 A. Nothing except that this looks like
3 it's from the previous drawing, not from this
4 drawing. This is --
5 Q. You're saying that partition between
6 the foyer --
7 A. This part of the partition, because in
8 the plan, he has a shower here, and here -- I
9 don't know.
10 Q. Okay. But that has nothing --
11 A. That has nothing to do --
12 Q. -- nothing to do --
13 A. No.
14 Q. -- with the issue of whether there are
15 similarities between the plans.
16 A. No.
17 Q. Okay. Sheet 4, A-4 of my client's
18 amended set of plans, which has master bedroom and
19 library elevations.
20 A. I have them on separate sheets.
21 Q. Which one do you want?
22 A. Bedroom.
23 MR. MANDEL: Which one is that one?
24 MR. McKEE: A-4.
25 Q. Now, at the top of A-4 we see some

1 Deiss
2 master bedroom elevation, right?
3 A. Correct.
4 Q. Tell me, what were the similarities
5 between the two?
6 A. Okay. Here, this elevation, which is
7 this elevation here (indicating), has -- I mean,
8 they even just copied my grills. My architectural
9 grills. This is the, basically the same elevation
10 as what we have here.
11 Q. All right. When you say
12 "architectural grills," on your drawing, on the
13 panel all the way to your right, as you look at
14 the north elevation, there's a -- what kind of
15 pattern would you call those grills?
16 A. Concentric.
17 Q. Concentric. Okay. Now, are you
18 saying that what we see on Hayden's plans here are
19 concentric?
20 A. Yes, I would say that.
21 Q. They are -- "bronze AC grill." So
22 it's a black square with a hole in the middle.
23 A. Well, it's because the drawing didn't
24 print properly.
25 Q. I see.

1 Deiss
2 black-and-white drawings.
3 Q. No, I'm not saying does the drawing
4 depict the color. I'm saying, does it specify the
5 color?
6 A. No, it doesn't. He has a wood panel
7 here. He has mirrored doors here, one, two,
8 three, four, one, to --
9 Q. On the closet doors?
10 A. Yes. And he has wood in the back.
11 Q. You've done other closet doors with
12 mirrors on them, have you not?
13 A. I have. But not the same that
14 somebody else has for the same drawing.
15 Q. I see. So if a client says, "I want
16 fabric covers on part of my closet doors and I
17 want some mirrors here so I can see what I look
18 like when I dress," would you consider that to be
19 an unusual request?
20 A. No.
21 Q. What else do you feel is a -- what's
22 this detail here?
23 A. That's an open cabinet.
24 Q. What do you mean it's an open cabinet?
25 It's open cubbies?

1 Deiss
2 A. Yes, open cubbies. He just has a
3 straight wall there with the same wood on it. He
4 doesn't have the open cubbies.
5 Q. He doesn't have the cubbies?
6 A. No, he just goes right over them. But
7 I mean the doors are the same.
8 Q. And --
9 A. Including the entrance door.
10 Q. The entrance door being that it's
11 wood?
12 A. Yes.
13 Q. Okay. And isn't wood the most typical
14 type of door?
15 A. It is. But you can also have a
16 painted door. It depends how you treat the rest
17 of the space.
18 Q. So if he had -- if he had a wood door
19 there but he said, "Painted wood door," that would
20 be a distinction?
21 A. Yes, it would be.
22 Q. I see. All right. So if the owner
23 said, "I don't want a painted door, I want a wood
24 door with a lacquer finish," would you think that
25 that was unusual?

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1 Deiss
2 A. Furniture.
3 Q. Furniture in that blank area of wall?
4 A. Yes, but I mean, this is not a
5 construction -- it's just a drawing.
6 Q. Yes, to show what the space can be
7 used for.
8 A. Exactly.
9 Q. Yes. Do the doors on either side of
10 your bathroom entry, do they call for bronze base
11 trim?
12 A. Yes.
13 Q. And have you ever used bronze base
14 trim on any other project?
15 A. No.
16 Q. So that was something you --
17 A. You don't usually use that in
18 projects.
19 Q. Okay. So was that something unique
20 that Mr. Voronchenko was looking for?
21 A. Well, it's something that he liked
22 that we started using in other rooms in the
23 library, for example, and in the foyer.
24 Q. So if the client says, "I want bronze
25 base trim there," would you say that that means

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1 Deiss
2 A. Does he have a wood door with a
3 lacquer finish?
4 Q. "Wood face lacquer finish, beige."
5 A. Then it's different from our door.
6 Q. Sticking with the master bedroom, what
7 other similarities?
8 A. Do you mind if I turn it so I can --
9 Q. Of course.
10 (Witness perusing chart.)
11 A. Yes, we're going to this part here.
12 Q. And which elevation is that? South
13 elevation?
14 A. Two little closet doors, two little
15 closet doors. Same over here. What he has
16 different is the double door into the bathroom.
17 We have a single door. Here and there.
18 Q. Now, so the double doors span the
19 entire distance between the two closets, correct?
20 A. In his -- in his drawing, yes. They
21 do. And we just have a single door.
22 Q. And you have sconces and wall space on
23 the other side, correct?
24 A. Yes.
25 Q. What are these objects here?

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1 Deiss
2 that my client sat down and literally copied off
3 your plans?
4 MR. MANDEL: Objection.
5 A. How does he get to bronze trim?
6 Excuse me.
7 Q. If a client tells him, "I want bronze
8 trim on the base" -- I'll pose you a different
9 question. If you were working for Mr. Voronchenko
10 and he said -- as you did -- and he says, "You
11 know what? I want bronze trim under those doors,"
12 would you put that in your detail?
13 MR. MANDEL: Objection.
14 Mischaracterizes prior testimony and calls
15 for speculation.
16 MR. ISRAEL: That's what she said.
17 MR. MANDEL: She did not ever say he
18 requested bronze doors. Ask if he
19 requested. Maybe he did, but that's not
20 what she testified.
21 A. No, I said that it's something he
22 liked.
23 Q. He liked. So now, if we're working for
24 Mr. Voronchenko, as you were, or did, and he said,
25 "I would like bronze trim under these doors," you

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1 Deiss
 2 would include it, wouldn't you?
 3 MR. MANDEL: Same objection.
 4 A. Maybe.
 5 Q. All right. What other aspects of the
 6 master bedroom do you feel are copied directly off
 7 your plans?
 8 A. If I tell you about the finishes, you
 9 know, the lacquer finish at the wood trims around
 10 the bedroom?
 11 Q. Now, in some of the depictions that we
 12 saw, some of the computer-generated depictions,
 13 the bedroom looked white. A lot of them, the
 14 master bedroom had a lot of white in it.
 15 A. Um-hum. It's not white, it's like a
 16 light gray.
 17 Q. Light gray.
 18 A. Yes.
 19 Q. Those computer-generated images of the
 20 master bedroom, were they generated before or
 21 after these plans were prepared?
 22 A. During.
 23 Q. During. But you needed the dimensions
 24 right. So, you didn't have the dimensions set, so
 25 you had this set of plans issued, correct?

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1 Deiss
 2 Mr. Voronchenko apparently liked?
 3 A. That was something that he liked.
 4 Q. Okay. 'Cause we also saw you had some
 5 more brownish --
 6 A. That's what it was, what he did not
 7 like.
 8 Q. And you also had the thing with the
 9 leaf, right?
 10 A. Wallpaper.
 11 Q. He didn't like that, either, did he?
 12 A. No.
 13 Q. Okay. And after any number of
 14 iterations, he decided that he liked this light,
 15 clean look, correct?
 16 A. I'm not sure, because he seemed to
 17 like it. But then he left and disappeared with
 18 our drawings, so in the end I do not know.
 19 Q. Well, when you had your presentation,
 20 and you gave him that book, and you walked around
 21 and showed it to him, the depiction of the master
 22 bedroom was in that rather light color.
 23 A. Yes.
 24 Q. And you said he was pleased.
 25 A. Yes.

1 Deiss
 2 A. Can you repeat the question?
 3 Q. Sure. You needed the dimensions for
 4 the rooms?
 5 A. Yes, I do.
 6 Q. In order to do the computer-generated
 7 images, correct?
 8 A. Correct.
 9 Q. And these were not issued as a
 10 preliminary set until December 23rd, correct?
 11 A. We issued them many times because they
 12 went through many iterations.
 13 Q. That was during design development,
 14 correct?
 15 A. And we did design development and
 16 construction documents at the same time.
 17 Q. Okay. Now, the depictions we saw
 18 today, computer-generated depictions, images, were
 19 of a -- when you say gray, it looked pretty white,
 20 a lot of the --
 21 A. Pretty light gray, yes.
 22 Q. Did those depictions show lacquered
 23 wood finish?
 24 A. Yes, they did.
 25 Q. And that was something that

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1 Deiss
 2 Q. So are you surprised that when he had
 3 Garth Hayden prepare revised drawings, he said,
 4 "This is how I want my master bedroom to look"?

5 MR. MANDEL: Objection, calls for
 6 speculation, assumes facts not in evidence.
 7 You can answer.
 8 A. No, I don't hear -- ever had any
 9 conversation with Garth Hayden about his master
 10 bedroom.
 11 Q. Since you said it, what do you base
 12 that on?
 13 MR. MANDEL: Objection, same
 14 objection.
 15 You may answer.
 16 A. These are not drawings that are
 17 prepared. These drawings are not drawings that
 18 you prepare for a client or because a client has
 19 that desire. These are very basic building
 20 department filing drawings.
 21 Q. Yes. And what's the purpose of
 22 building department filing drawings, as you've
 23 used that term?
 24 A. To get them approved by the building
 25 department.

1 Deiss
2 Q. And the purpose of that is what, so
3 you can move forward and build?
4 A. Yes.
5 Q. Okay. So why wouldn't they be
6 sufficient for a client?
7 A. For a client like Mr. Voronchenko,
8 they would not be sufficient because he needs to
9 be able to visualize what he wants to have.
10 Q. Do you have any knowledge or
11 understanding of what Libracon was providing to
12 Mr. Voronchenko after your termination?
13 A. No.
14 Q. How about Pepe Calderan, any notion or
15 idea what Mr. Pepe Calderan is providing?
16 A. I saw drawings of his recently. They
17 were provided to us through, I think, you.
18 Q. Okay. All right. Library elevations.
19 Would you go to the library. Okay. Now, in this
20 depiction, Mr. Hayden shows four elevations, as
21 you do, correct?
22 A. Correct.
23 Q. And you have a floor plan, correct?
24 A. Yes. Correct.
25 Q. Now, if you look at his, the

1 Deiss
2 Q. How about the door, did Voronchenko,
3 was there discussion about different looks for
4 that door into the library?
5 A. I think we went through different
6 designs, but it was always very similar to this.
7 Q. And what's this?
8 A. This one is the elevation that you see
9 here (indicating), which is the exact same one,
10 basically, to the -- at the east side of the
11 library. You see the recessed ceiling, you see
12 the vault, the soffit, the door, the door handle,
13 the bronze trim, and the division of the panels.
14 It's the exact same thing.
15 Q. And these would be the bookcases down
16 the side?
17 A. Yes.
18 Q. Now, the space laid out for that area,
19 that called for a door to be in that position,
20 correct?
21 A. Yes.
22 Q. So the fact that there's a door in
23 that location doesn't make it unique, does it?
24 A. No. But the way you divide up the
25 panels and run the trim around and set up the

1 Deiss
2 elevation, which I guess is south, which looks
3 toward the bookcases, you'd agree with me that he
4 has five spaces instead of your six, correct?
5 A. Hum.
6 Q. Yes?
7 A. Yes.
8 Q. Now, when you went to Mobili, did you
9 see the overall scope of the work that they were
10 making, the bookcases that they were making?
11 A. No, I saw the vault that they were
12 making, the ceiling vault. No. And they pointed
13 out to the ceiling vault and said, "There is the
14 library ceiling vault."
15 Q. Yes. And that ceiling vault,
16 Voronchenko, that's something he wanted?
17 A. That's something he -- yes, he wanted
18 it. We showed it to him and he liked it and he
19 wanted it.
20 Q. Through all the iterations that you
21 went through with Voronchenko, did he ever change
22 his mind about the ceiling vault?
23 A. He never did.
24 Q. He always wanted that?
25 A. He always wanted that.

1 Deiss
2 soffit with the vault, yes.
3 Q. And Palisander, again, is a type of
4 wood?
5 A. Yes.
6 Q. Now, here it says, "Wood panel." Does
7 it say Palisander?
8 A. You may not see "Palisander," but
9 Palisander is everywhere. It's in the drawings,
10 and when we have rendering -- Palisander is on the
11 renderings.
12 Q. It was Mr. Voronchenko who said he
13 wanted Palisander, right?
14 A. Right.
15 Q. In fact, do you recall getting an
16 e-mail from him or Braverman saying that he wanted
17 Palisander?
18 A. I don't remember the e-mail
19 specifically, but I remember the Palisander.
20 Q. So the fact that details in this
21 library or elsewhere in his home called for
22 Palisander wood, if the plans were drawn by you or
23 some other architect, that doesn't surprise you,
24 does it?
25 MR. MANDEL: Objection.

1 Deiss
 2 some kind of copyright protection because it has
 3 been reduced to a drawing one time, in one set of
 4 drawings by you?
 5 MR. MANDEL: Objection, calls for a
 6 legal conclusion.
 7 But you may answer.
 8 A. It is unusual that a client has this
 9 kind of request, yes.
 10 Q. So if somebody else on another
 11 apartment on Park Avenue, or maybe in the same
 12 building, decides to expand their foyer to
 13 resemble whatever Mr. Voronchenko was doing here,
 14 and decides to include a circular recess in the
 15 foyer, would you claim that that was an
 16 infringement of your design?
 17 MR. MANDEL: Objection, calls for a
 18 legal conclusion.
 19 A. I'm not going to answer.
 20 Q. I would ask you to answer. Do you
 21 have an answer?
 22 A. No.
 23 Q. You have no answer to that?
 24 A. No.
 25 Q. So are you claiming copyright

1 Deiss
 2 MS. ZLOTNIKOVA: Eleonora Zlotnikova.
 3 MR. ISRAEL: An unlicensed lawyer.
 4 Her admission is pending. She's going to
 5 sit here and take notes, that's right.
 6 MR. MANDEL: And we'll see you back
 7 here in about an hour, Mr. Israel?
 8 MR. ISRAEL: However long the court
 9 takes. But I understand Mr. McKee may be
 10 closing his doors at a certain time.
 11 MR. MANDEL: Before you leave, why
 12 don't we just --
 13 MR. ISRAEL: I'll come back here.
 14 MR. MANDEL: You're coming back here
 15 so we'll wait for you --
 16 MR. ISRAEL: I suspect it won't be
 17 past 5:30. I'm sure your client will still
 18 be here at 5:30 because I'd like to ask her
 19 questions today.
 20 Will you still be here at 5:30?
 21 Okay. I'm going. See you later.
 22 MR. MCKEE: This would be a good time
 23 to take a break.
 24 MR. MANDEL: Yes, we've been going
 25 about two hours. I would like a break.

1 Deiss
 2 protection against any other apartment in the
 3 building, including that kind of detail, because
 4 you've taken it and once put it on a drawing?
 5 MR. MANDEL: Objection, calls for a
 6 legal conclusion.
 7 You may answer.
 8 A. No comment.
 9 MR. MANDEL: Mr. Israel, for the
 10 record, am I correct, Mr. Israel, you're
 11 leaving?
 12 MR. ISRAEL: I'm going to court to see
 13 Judge Kaplan.
 14 MR. MANDEL: You're leaving to go to
 15 court --
 16 MR. ISRAEL: To see Judge Kaplan. I
 17 welcome you to call him to tell him it
 18 wasn't necessary for me to come to his court
 19 on a preliminary injunction matter, but you
 20 seem not to be interested in calling the
 21 judge and telling him how much more
 22 important your deposition is, so I'm ordered
 23 to go to court.
 24 MR. MANDEL: And your colleague,
 25 Ms. --

1 Deiss
 2 (Recess taken.)
 3 (Mr. Israel is not present.)
 4 MR. MCKEE: Let's mark this set.
 5 EXH (Defendant Exhibit 9, collection of
 6 various drawings, marked for identification,
 7 as of this date.)
 8 EXAMINATION (Cont'd.)
 9 BY MR. MCKEE:
 10 Q. Ms. Deiss, I'm going to hand you a
 11 collection of drawings which were produced by your
 12 prior counsel.
 13 A. Um-hum.
 14 Q. They are grouped in this fashion
 15 because this is a series of various drawings of
 16 the project of various dates. But they all have
 17 some degree of handwriting on them.
 18 A. Um-hum.
 19 Q. The first page is designated sheet A-1
 20 and has a date of January 19, 2008.
 21 A. Um-hum.
 22 Q. Or 16, I'm upside-down. 16.
 23 A. Sixteen.
 24 Q. 2008.
 25 A. Well, that's a mistake.

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Deiss

2 Q. That's a mistake.
3 A. That's a mistake, yeah.
4 Q. The handwriting on this drawing which
5 is entitled, "Construction Plan," do you recognize
6 any of the handwriting?
7 A. Yeah.
8 Q. Is any of it yours?
9 A. No.
10 Q. Okay. Whose handwriting is it?
11 A. I think it's Aaron. Aaron Boucher.
12 Q. Now, here in the index of changes
13 area, it says, "Corrected by" --
14 A. Eric.
15 Q. -- by Eric?
16 A. Yeah, he probably picked up the red
17 lines.
18 Q. And who is Eric?
19 A. Eric was somebody working in my
20 office. He worked on the project.
21 Q. Okay, was he an architect?
22 A. Yes.
23 Q. Is he still with you?
24 A. Sorry?
25 Q. I'm sorry, is he still with you?

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1 Deiss
2 A. No. He's on the West Coast working.
3 Q. And his last name was what?
4 A. Olsen.
5 Q. Olsen?
6 A. Yes.
7 Q. O-l-s-e-n?
8 A. Yeah.
9 Q. So the notation there, the handwriting
10 to me looks different than the notes on here.
11 A. Yeah.
12 Q. It was written by two people?
13 A. Yeah, this has been redlined by Aaron
14 Boucher.
15 Q. So you're pointing, the writing on the
16 plan itself, on the layout of the floor, that's by
17 Aaron Boucher?
18 A. Yes.
19 Q. And then the note on the side says,
20 "Corrected by Eric"?
21 A. Yes, because we -- we -- yeah.
22 Q. So the markings by Aaron, that would
23 be the red line.
24 A. Yes. This would be done in red,
25 correcting the drawings. And Eric would pick up

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1 Deiss
2 the red lines on the computer.
3 Q. I see. Now, the date there, 1/5/06,
4 what is the date there? Can you read that?
5 A. 1/5/08. I don't know.
6 Q. '08?
7 A. It can't be 1/5/08.
8 Q. You were still working on this project
9 in January of 2009.
10 A. Yes.
11 Q. Now, you presented today with a set of
12 plans identified as "Preliminary Issue Set
13 December 23rd, 2008."
14 A. Yes.
15 Q. Your file, your registration of your
16 copyright, references original works created in
17 2009.
18 Is there a subsequent set of, as you
19 phrase them, construction documents? Something
20 that came after the set we marked today?
21 A. Uh -- that's what I wasn't sure about.
22 There might be another one, yes.
23 Q. Okay.
24 A. Probably.
25 Q. Because that I don't have, and I

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Deiss

haven't seen it.

A. I'll get it to you.

Q. If it exists. If there's a 2009 set.

A. I actually thought that what we had printed was the most recent one, but if there are other drawings that are not -- I guess it isn't.

Q. Looking again at another sheet, A-1, second in this collection, again, there's some notations on the drawing itself. That would be, Aaron did those?

A. Yes.

Q. And the handwritten up here --

A. "Corrected, Eric," yes.

Q. And again it has, 1/5, looks like "08/09"?

A. Eight kind of crossed out, and then nine.

Q. We're now looking at a third version of sheet A-1, same kind of notations, same thing, Aaron made the red lines and then Eric --

A. Picked them up.

Q. Okay. The fourth sheet in is designated sheet A-2. The handwriting on there again looks like the same person, that would be